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No. 80-2102

In the Supreme Court of the United States

OCTOBER TERM, 1981

SHEILA RENDELL-BAKER,
PETITIONER,

v.

SANDRA KOHN, ET AL.,
RESPONDENTS,

WAYNE KLUG, ET AL.,
PETITIONERS,

v.

NEW PERSPECTIVES SCHOOL, INC., ET AL.,
RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JUNE 12, 1981
CERTIORARI GRANTED OCTOBER 13, 1981

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The following items are contained in the Appendix to the Petition for Certiorari ("PA") and are not reproduced herein:

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Compendium of Private School Provisions in State Special Education Statutes..... P.A. 89

GENERAL DOCKET

United States Court of Appeals
For the First Circuit

Case No. 80-1328

SHEILA RENDELL-BAKER,
PLAINTIFF, APPELLANT,

vs.

SANDRA KOHN, ET AL.,
DEFENDANTS, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
[641 F.2d 14]
CONSOLIDATED WITH 80-1451.

No. below: 77-2236
Judge below: J. Caffrey
Date of Judgment: Order: April 16, 1980
Notice of appeal filed: May 15, 1980
[Civil Rights]

DOCKET ENTRIES

1980	*Filings—Proceedings*
May 16	Copy of Notice of Appeal along with district court docket entries received and filed and case docketed. (cb)
May 22	Record on appeal in one volume, with exhibits, received & filed. Notices mailed. (mn)
May 23	Appearance of Matthew M. Feinberg, Esquire for appellees received and filed. (cb)
May 23	Appellant's Statement pursuant to First Circuit Rule 8(a) received and filed. (cb)

1980 *Filings—Proceedings*

June 26 Brief for appellant and appendix received and filed. Notices mailed. [jc]

July 10 Assented to motion filed. Order (Coffin, Ch. J.) enlarging time for appellees to file their brief to and including August 12, 1980. Notices mailed. [eam]

Aug. 8 Brief for appellee, received & filed. (mn)

Aug. 13 Motion filed. Order (Bownes, J.) granting leave to appellees to file their brief instanter. Brief for appellee filed. Notices mailed.

Sept. 29 Assigned for hearing at the October, 1980 session. [jc]

Oct. 6 Appearance of Betty Warman for Appellee received and filed. Heard by Coffin, Campbell & Bownes, J.J. [lam] Appearance of Robert H. Doyle, for appellant, received and filed. (mn)

1981

Feb. 12 JUDGMENT: The judgment of the district court is affirmed. Notices mailed. Opinion of the court by Campbell, J. (jmv)

Feb. 20 Itemized and verified bill of costs received and filed. Notices mailed. [eam]

Mar. 5 Taxation of costs filed. Mandate issued, copy filed and original papers returned to the district court. Notices mailed. [eam]

June 19 Notice of filing petition for certiorari (80-2102) June 12, 1981. [lam]

Oct. 16 Order of Supreme Court granting certiorari (80-2102) October 13, 1981. [lam]

GENERAL DOCKET

United States Court of Appeals
For the First Circuit

Case No. 80-1451

WAYNE KLUG, ET AL.,
PLAINTIFFS, APPELLEES,

vs.

THE NEW PERSPECTIVES SCHOOL, INC., ET AL.,
DEFENDANTS, APPELLANTS.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
[641 F.2d 14]
CONSOLIDATED WITH 80-1328.

No. below: C.A. 78-2402
Judge below: J. Mazzone
Date of Judgment:
Notice of appeal filed:
[Civil Rights]

DOCKET ENTRIES

1980	*Filings—Proceedings*
June 23	Defendants' Petition for Permission to Appeal an Interlocutory Order under 1292(b) F.R.A.P. Rule 28(c) received and filed. (cb)
July 7	Plaintiffs' opposition to defendants' petition for permission to appeal interlocutory order filed. [gvc]
July 8	Order (Coffin, Ch. J.) granting leave to The New Perspectives School, Inc., et al. to appeal pursuant to 28 U.S.C. SEc. 1292(b) from the order of the

1980 *Filings—Proceedings*

U.S. District Court. It is ordered that the time for appellants to file their statement of issues and designation is to be filed on or before July 18, 1980, appellants are to serve their brief and appendix on or before August 12, 1980; and appellees are to file their brief on or before September 2, 1980. It is further ordered that this case be consolidated with case number 80-1328 for purpose of argument. These cases are assigned for the October, 1980 session. Notices mailed. [jc]

July 9 Record on appeal received and filed. [jc]

Aug. 13 Appellants' motion to file brief and appendix late, and appellants' motion to file late notice of agreement as to contents of appendix filed. Order (Bownes, J.) granting said motions. Notices mailed. Brief and appendix for appellants filed. [lam] Notice of agreement as to contents of appendix filed. [lam]

Aug. 29 Brief for appellee, received & filed. (mn)

Sept. 29 Assigned for hearing at the October, 1980 session. [jc]

Oct. 6 Heard by Coffin, Campbell & Bownes, J.J. [lam] Appearance of Kurt Pressman, for Wayne Klug, et al., filed, and appearance of Matthew H. Feinberg, for appellants, received and filed. (mn)

1981

Feb. 12 JUDGMENT: The order of the district court is vacated and the matter is remanded to that court with directions that judgment be entered in that case dismissing the complaint. Costs to appellants. Notices mailed. Opinion of the court by Campbell, J.

Feb. 20 Itemized and verified bill of costs received and filed. Notices mailed.

1981		*Filings—Proceedings*
Mar.	6	Appellees' Objection to appellants' verified bill of costs filed. Order (Campbell, and Breyer, J.J.) denying appellees' objection to appellants' verified bill of costs. Notices mailed. [jc]
March	11	Taxation of costs filed. Mandate issued, copy filed and original papers returned to the district court. Notices mailed. [eam]
June	19	Notice of filing petition for certiorari (80-2102) June 12, 1981. [lam)
Oct.	16	Order of Supreme Court granting certiorari (80-2102) October 13, 1981. [lam]

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

No. 77-2236-C

SHEILA RENDELL-BAKER,
PLAINTIFF,
v.
SANDRA KOHN, ET AL,
SUSAN ALFORD, STEPHEN GOLDENBERG, RODNEY JACKSON,
JAMES SCHLESINGER, RINA WALD SPENCE, EDWARD ZARSKY,
NEW PERSPECTIVES SCHOOL, INC.,
DEFENDANTS.

CIVIL RIGHTS

DOCKET ENTRIES

1977		*Proceedings*
July	28	Complaint filed.
	28	Motion for appointment of process server. filed.
	28	Summonses issued.
Aug.	22	Stipulation to enlarge tiem for filing of answer by Francis X Bellotti and Robert J. Kane to Aug. 25, 1977 filed.
	26	Return of summons with service on Sandra Ford on Aug. 11, 1977, filed—on Susan Ford on Aug. 11. 1977; on Edward Zarsky on July 29, 1977; on Rodney on Wug. 11, 1977; on Francis X. Bellotti on July 29, 1977; on Robert J. Kane on July 29, 1977; on James W. Schlesinger on July 29, 1977; and on New Perspectives School, Inc. on July 29, 1977 filed.
	29	Motion of defts. Francis X. Bellotti and Robert to dismiss filed. c/s

1977		*Proceedings*
Sept.	6	Opposition to motion to dismiss of defts. Francis X. Bellotti and Robert J. Kane filed. c/s
	9	Pltff.'s 1st set of interrogs. to deft. Robert J. Kane filed. c/s
	28	Summons returned with service on Stephen Goldenberg on Sept. 19, 1977 and filed.
	28	Summons returned with service on Rina Wald Spence on Sept. 19, 1977 and filed.
Oct.	7	Motion to extend time for filing brief (pltffs.') in opposition to defts. Bellotti and Kane's motion to dismiss until after the filing of motions by other defts. filed.
	7	Motion of pltff. to extend time for filing brief filed. Oct. 7, 1977. ALLOWED. Counsel notified.
	27	CAFFREY, CH.J. Call for hearing on defts.' motion to dismiss; no one appeared.
Nov.	9	Default issued against the defts., Sandra Kohn, Susan Alford, Stephen Goldenberg, Rodney Jackson, James Schlesinger, Rina Wald Spence, Edward Zarsky, New Perspectives School, Inc. for failure to answer complaint served on July 29, 1977, Aug. 11, 1977 and Sept. 19, 1977 and pursuant to request filed by pltff. on Nov. 4, 1977. Copies to defaulted deft.s.
	15	Pltff.'s demand for production of documents to defts. Bellotti and Kane, filed. c/s
	17	Deft. Bell and Gregg's motion to dismiss, FILED. c/s
	22	Pltff.'s opposition to motion of defts. Bell and Gregg to dismiss action filed. c/s
	28	Notice of delinquency re defts. except State and Federal defts. withdrawn
Dec.	5	Appearance of Stephen B. Goldenberg, Esq. of Esrael & Goldenberg as atty. for the defts. Kohn, Alford, Goldenberg, Hackson, Schlesinger, Spence, Zarsky, and New perspectives School, Inc. filed.

1977		*Proceedings*
Dec.	5	Answers of Stephen B. Goldenberg, Rodney Jackson, James Schlesinger, Rina Wald Spence, Edward Zarsky, Susan Alford, Sandra Kohn, and The New Perspectives School, Inc. received.
	5	Motion for leave to file answers late filed. c/s Affidavit in support of motion to file answers late attached.
	6	Certificate of service re above motion filed.
Dec.	12	CAFFREY, CH.J. MOTION of defts. for leave to file answer late ALLOWED. Answers filed. Counsel notified.
Nov.	18	Marshal's return of summons with service on defts. on Aug. 11, 12 and Sept. 19, 1977 filed.
1978		
Jan.	11	Pltff.'s 1st demands for production of documents to deft. James W. Schlesinger filed.
	11	Pltff.'s 1st set of interrogs. to deft. Kohn filed. c/s
	16	Pltff.'s 1st set of interrogs. to New Perspective School, Inc. filed. c/s
Mar.	6	Motion of pltff. to compel production of documents by James W. Schlesinger filed. c/s
	6	Motion of pltff. to compel answers to p.'s 1st set of interrogs. to d. New Perspectives School, Inc. filed. c/s
	6	Pltff.'s 1st set of interrogs. to deft. Rodney Jackson filed. c/s
	6	Motion of pltff. to compel answers to p.'s 1st set of interrogs. to deft. Kohn filed. c/s
	21	Motion of deft. Bellotti and Kane to extend time to respond to pltff.'s discovery requests filed. Assented to. (30 days) Assented to.
	23	Pltff.'s 1st set of interrogs. to deft. Rina Wald Spence filed. c/s
	24	Pltff.'s 1st set of Interrogs. to deft. Edward Zarsky filed. c/s

1978		*Proceedings*
April	4	CAFFREY, CHJ. Motion of pltff. for order compelling 1st set of interrogs. answers to from deft. ALLOWED. (deft. Kohn)
	4	CAFFREY, CHJ. Motion to compel answers to pltff.'s 1st set of interrogs. to deft. New Perspectives School, Inc. ALLOWED. Counsel notified.
	4	CAFFREY, CH.J. Motion of pltff. to compel production of documents from deft., James W. Schlesinger ALLOWED. Counsel notified.
May	26	Motion for entry of default against New Perspectives School filed. c/s
	26	Motion for entry of default against Sandra Kohn filed. c/s
	26	Motion for entry of default against James W. Schlesinger filed. c/s
	31	Motion to compel answers to pltff.'s 1st set of interrogs. to deft. Edward Zarsky filed. c/s
	31	Pltff.'s 1st set of interrogs to deft. Susan Alford filed. c/s
June	1	Motion to compel answers to pltff.'s 1st set of interrogs. to deft. Rina Wald Spence filed. c/s
	15	Motion if the pltff. for leave to amend complaint and for leave to serve new parties filed. c/s
	21	Motion to compel answers to plaintiff's first set of interrogatories to defendant Rina Wald Spence/ ALLOWED. Copies to Counsel.
Jul	7	Notice of delinquency issued against Susan Alford, deft. for failure to answer pltff.'s interrogs. 1st set. Copies to counsel.
Jul	25	Motion to file answers to pltff.'s 1st set of interrogs. late filed. c/s Affidavit of Stephen B. Goldenberg filed.
	25	Deft. Sandra Kohn's answers to pltff.'s 1st set of interrogs. filed. c/s

1978		*Proceedings*
Jul	25	Motion to file answers to pltff's 1st set of interrogs. late filed. c/s
	25	Deft. New Perspectives School Inc.'s answers to pltff.'s 1st set of interrogs. filed. c/s
	24	CAFFREY, CH.J. Motion for leave to amend complaint and for leave to serve new parties. Deft. Counsel notified.

1979		
Feb.	7 01	Application for notice of delinquency for deft Rina Wald Spence for failure to answer interrogs of 3/23/78, filed.
	02	Application for notice of delinquency for deft Rodney Jackson for failure to answer interrogs of 3/6/78, filed.
	03	Application for notice of delinquency for deft. Edward Zarsky for failure to answer interrogs of 3/24/78, filed.
	7 04	Notice of delinquency issued to defts Spence, Jackson and Zarsky, for failure to answer interrogs. cc/cl.
	12 05	Pltf's motion to compel answers to ints by deft. Alford, FILED. c/s.
	16 06	Pltf's motion for order to compel complete answers to interrogs, FILED. cs. (Re: deft Sandra Kohn)
	20 07	Motion of defts' Bellotti and Kane for leave to withdraw their motion to dismiss, FILED. (Assented to)
	23	CAFFREY, CH.J. Re: document #07 to withdraw motion to dismiss, "Motion Allowed." cc/cl
Feb.	26	CAFFREY, CH.J. Case called for hearing on Defts' motion to dismiss; State defts' motion to

1979		*Proceedings*
		dismiss withdrawn; Arguments on Motion to dismiss of Federal Defts; Pltf to file memo in opposition to Fed. defts motion to dismiss; then under advisement.
26	08	Pltf's memorandum in opposition to motion of defts Bell and Gregg to dismiss pltf's action, FILED.
Mar. 6	09	Pltf's motion to compel answers to interrogs to defts Zarsky, Jackson and Spence, FILED. cs.
	10	Plt's motion for entry of default for failure of deft Schlesinger to produce documents, FILED. cs.
	11	Affidavit in support of motion for entry of default, FILED. cs.
12	12	Pltf's request for production of documents to New Perspectives School—first set, FILED. cs.
Apr. 2		CAFFREY, CH.J. Case called for hearing on Pltf's motion to default and 3 motions to compel answers; Answers to be filed by 4/6/79 and response to request to produce to be filed by 4/6/79.
Apr. 6	13	Motion for leave to defts Spence, Zarsky and Jackson to ans ints and for Schlesinger to file Rule 37 response to extend time to 4/13/79, FILED. (Assented to)
6		CAFFREY, CH.J. Re: document #13 to extend time—"Motion Allowed." cc/cl.
Apr. 12		CAFFREY, CH.J. Re: motion of defts Bell and Gregg to dismiss, (filed on 11/17/77) "Motion Allowed." cc/cl.
23	14	Pltf's motion for entry of default against defts Zarsky, Jackson and Spence, FILED. cs.
	15	Pltf's motion to compel production of documents from deft New Perspectives School, FILED. cs.

1979		*Proceedings*
April 24	16	Pltf's motion for entry of default against deft Schlesinger, FILED. cs.
	17	Pltf's motion for entry of default against deft Kohn, FILED. cs.
	18	Pltf's motion for entry of default against deft Alford, FILED. cs.
May 11		CAFFREY, CH.J. Re: documents #16, 17 and 18 for entry of default, "Motions Denied." cc/cl.
15		CAFFREY, CH.J. Re: #14 for entry of default—"Motion Denied." Re: #15 to compel production—"Motion Denied." cc/cl.
Sept. 13	19	Pltf's motion for sanctions for failure of defts to provide discovery, FILED. cs.
18	20	Deft's motion to file answers to pltf's interrogs and response to requests for documents late, FILED. (Assented to) With answers rec'd for filing.
24		CAFFREY, CH.J. Re: #20 to file ans and response to request for production late—"Motion Allowed." cc/cl.
24	21	Deft Susan-Alford Sandman's answers to pltf's first set of interrogs, FILED.
	22	Deft Edward Zarsky's answers to pltf's first set of ints, FILED.
	23	Deft Rodney Jackson's ans to pltf's first set of ints, FILED.
	24	Deft Rina Wald Spence's ans to pltf's first set of ints, FILED.
	25	Deft Sandra Kohn's further ans to pltf's ints, FILED.
	26	Deft's response to pltf's first demands for production of documents, FILED.
28		Certificate of service re: #20, FILED.
Nov. 9		Letter to Clerk re: change of address of the attorney for the pltff, FILED.

1980			*Proceedings*
Jan.	2	27	Pltff's motion to compel answer to interrog, and for sanctions, against Deft Kohn, FILED, cs.
Jan.	2		CAFFREY, CH.J. Case called for assignment of trial; discovery to be completed by 1/31/80, pending motions set for 2/4/80 at 10:00 AM.
Jan.	23	28	Motion for entry of defaults for the refusal of the Defts' Schlesinger, Kohn and New Perspectives School to furnish discovery. FILED, cs.
Jan.	25	29	Motion for summary judgement of Defts' Bellotti and Highgas. FILED, cs.
		30	Affadavit of William Hifggas, Jr., FILED, c/s.
		31	Defts Bellotti and Highgas' response to Pltff's request for production. FILED, c/s.
		32	Deft's answer to pltff's first set of interrogatories. FILED, c/s.
	29	33	Supplement to Motion for Entry of Defaults. FILED, c/s.
	30	34	Supplemental Affidavit in Support of Motion for Summary Judgment. FILED, cs.
	"	35	Supplemental Affidavit of William Highgas, Jr., FILED, cs.
	"	36	Def's for Bellotti and Highgas's supplemental response to Pltff's request for production, FILED, cs.
Feb.	1	37	Plaintiff's Motion to add William Highgas, Jr., as party defendant, FILED, cs.
	"	38	Plaintiff's opposition to motion for summary judgment of defendants Bellotti and Highgas, FILED, cs.
	"	39	Plaintiff's affidavit in opposition to defendant's Bellotti and Highgas (Kane) Motion for summary judgment, FILED, cs.

1980		*Proceedings*
Feb. 1	40	Affidavit in opposition to motion for summary judgment of defendant Bellotti and Highgas, FILED, cs.
4		CAFFREY, CH.J. Case called for hearing on motion for summary judgment; arguments; memo of deft's in support of motion filed; pltf's memo in opposition to motion filed; taken under advisement.
Mar. 17		CAFFREY, CH.J. Case called for trial assignment; Appearance of Attorrey Anitra D. Lanczi for Pltff filed; Motion for withdrawal of counsel Stephen Goldenberg for deft; filed and "Allowed"; Appearance of Matthew H. Feinberg for deft filed; trial scheduled for 6/2/80 at 10:00 AM.
Mar. 20	41	Deft. New Perspectives School's response to pltff.'s first demand for production of documents, FILED.
"	42	Deft. Sandra Kohn's further answers to pltff.'s first set of interrogatories, FILED.
21		CAFFREY, CH.J., re: 37 motion to add Highgas as party deft., "MOTION ALLOWED", cc/cl.
Apr. 16	43	CAFFREY, CH.J., MEMORANDUM AND ORDER ENTERED..."THE ACTION IS DISMISSED AGAINST DEFENDANTS HIGHGAS AND BELLOTTI. THE ACTION IS DISMISSED AS TO ALL REMAINING DEFENDANTS." cc/cl. and West.
May 9	44	Pltff.'s motion for reconsideration and relief from judgment, FILED. cs.
May 12		CAFFREY, CH.J., re: #44 motion for reconsideration, "MOTION DENIED." cc/cl.
May 15		Notice of Appeal filed w/ c/s. (plaintiff) Filing fee paid.

1980	*Proceedings*
May 21	Certified docket entries and original pleadings sent to the Court of Appeals.
1981	
Feb 12	Opinion received from the Court of Appeals entered....The district court's judgment in Court of Appeals No. 80-1328 is affirmed. The district court's order in 80-1451 is reversed and the matter remanded with directions that judgment be entered in that case dismissing the complaint.
Mar 5	Mandate received from the Court of Appeals entered.....affirmed. Costs in favor of appellee $51.30.
	Original pleadings returned from the Court of Appeals.

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

No. 78-2402-MA

KLUG, WAYNE
ANDERSON, CAROLYN
STEIN, PAUL
TILDEN, WILLIAM
FONSECA, DAWN,
PLAINTIFFS,
v.
THE NEW PERSPECTIVES SCHOOL INC., ET AL.,
DEFENDANTS.

CAUSE
42 USC 1983—VIOLATION OF FIRST AND
FOURTEENTH AMENDMENTS

DOCKET ENTRIES

1978			*Proceedings*
Sept	12	01	Verified complaint filed. (TRO and PI requested)
	12		Summons issued.
Dec	12	02	Pltfs' motion for appointment of special process server, filed and ALLOWED.
1979			
Feb	7	03	Summons returned, with service on deft The New Perspectives School 10/28/78.
	7	04	Summons returned, with service on all other defts 1/10/79.
	7	05	Pltfs' request for default of defts, filed.

1979			*Proceedings*
Feb	12	06	Notice of default of defts issued. cc/cl and defts. (Defts defaulted: New Perspectives School, Goldenberg, Gartner, Neimann, Bachrach, Schlesinger, Alford, Goodwin, Hamberg & and Zarsky).
	26	07	Defts' motion for relief from default, filed, c/s.
Mar	5		MAZZONE, J. (by the court) re #07: "Allowed; answer to be filed on or before 3/20/79." cc/cl.
	19	08	Deft's motion to fiel responsive pleadings late. Field Assented to.
May	7	09	Pltf's Request for Default, filed, c/s
		10	Pltf's motion for Default Judgment, filed, c/s Notice of Default, issued. cc/cl
May	10	11	Deft's motion for relief from Default & Leave to file responsive Pleadings, filed.
May	11	12	MAZZONE J— RE: #11 Motion Allowed. Defts motion to dismiss, FILED.
	15	13	Pltfs' opposition to defts' motion for relief from default filed.
Nov	15	14	Motion to extend time for filing Memo of law to Dec. 17, 1979, Assented to.
Nov	26		MAZZONE J RE: #14 Motion Allowed, cc/cl
Dec	17	15	Motion to extend time for filing memo of law in support of motion to dismiss, Assented to.
1980			
Jan	9	16	Motion to extend time for filing memo of law in support of motion to dismiss, Assented to.
	11		MAZZONE J RE: #16 Motion Allowed cc/cl.
	21	17	Pltf's memo of Law in oppo to deft's motion to dismiss or to stay Proceedings, filed.
	25	18	Memo of law in support of deft's motion to dismiss, filed, c/s.

1980			*Proceedings*
Feb	5	19	Defts' amended motion to dismiss, filed. c/s.
Feb	22	20	Pltf's supplemental Memo of Law in oppo to deft's Amended motion to Dismiss, filed c/s.
		21	Affidavit of Wayne Klug in oppo to defts' motion to Dismiss, filed c/s.
	28		MAZZONE J Hearing on defts motion to dismiss; Arguments; Matter taken under advisement.
Apr.	7		MAZZONE J MEMO & ORDER, Motion to dismiss is denied so ordered, cc/cl.
May	1	22	Request for default to deft, filed
	13		Notice of default issued, cc/cl.
	15	23	Agreement to extend time to ans complaint & to remove default, filed.
		24	Deft's ans to complaint, filed, c/s.
	19		MAZZONE J RE: #23 Agreement approved cc/cl.
June	3	25	Deft's motion to amend Order denying deft's motion to dismiss, filed c/s.
	10		MAZZONE J RE: #25 Motion Allowed cc/cl.
	13	26	Pltfs' opposition to defts' motion to amend order denying defts' motion to dismiss, FILED. cs.
		27	Pltfs' memo in opposition to defts' motion to amend order denying defts' motion to dismiss, FILED. cs.
	13	28	MAZZONE, D.J. ORDER re: #25, entered. cc/cl.
	13		MAZZONE, D.J. Re: #25—"Order entered, after reconsideration of motion and opposition thereto." cc/cl.
Jul	2	29	Pltf's oppo to deft's petition for permission to appeal Interlocutory Order, filed, c/s. (Should have been filed in Court of Appeals, Original and copies forwarded on 7/7/80 HMC.)

1980	*Proceedings*
July 9	ORDER received from Court of Appeals, "It is ordered as follows.....This cause is consolidated with Cas Number 80-1328 for purpose of argument and both cases are assigned to the October, 1980 list."
July 9	Certified docket entries and original pleadings sent to Crt. of Appls.
1981	
Feb 12	Opinion received from the Court of Appeals entered.....The judgment in No. 80-1328 is affirmed. The district court's order in No. 80-1451 is reversed and the matter remanded with directions that judgment be entered in that case dismissing the complaint.
Mar 11	Mandate received from the Court of Appeals entered...The order of the district court is vacated and the matter is remanded to that court with directions that judgment be entered in that case dismissing the complaint. Costs in favor of appellants taxed at $455.60. Original pleadings returned from the Court of Appeals.
Mar 12	MAZZONE J Judgment Entered, cc/cl

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.

WAYNE KLUG, CAROLYN ANDERSON,
PAUL STEIN, WILLIAM TILDEN,
AND DAWN FONSECA,
PLAINTIFFS,

v.

THE NEW PERSPECTIVES SCHOOL, INC.; SANDRA KOHN, Individually and As Director of the New Perspectives School, Inc.; JAMES W. SCHLESINGER, Individually and as President of the Corporation and Chairman of the Board of Directors of New Perspectives School, Inc.; STEPHEN GOLDENBERG, JOSEPH GARTNER, JOANNE NEIMAN, DAVID BACHRACH, RODNEY JACKSON, RINA WALD SPENCE, SUSAN ALFORD, RHODA GOODWIN, RITA HAMBERG, TONIA YEE, and EDWARD ZARSKY, Individually and as Members of The Board of Directors of New Perspectives School, Inc.,
DEFENDANTS.

COMPLAINT

Introduction

This is a civil action brought by the plaintiffs, who are teachers and counselors discharged by a publicly funded and regulated school in retaliation for their exercise of their right to freedom of speech and to engage in concerted activities for their mutual aid and protection. This action seeks redress for violations of their constitutional rights to due process, equal protection, and freedom of speech. Injunctive and declaratory relief, as well as damages, is demanded.

Jurisdiction

1. Jurisdiction is conferred upon this Court by 28 U.S.C. §§1331, 1343, and 1361, and the First, Fifth, and Fourteenth

Amendments to the United States Constitution. Jurisdiction is also conferred upon this Court for the entry of declaratory relief under 28 U.S.C. §§2201 and 2202. This action is also authorized by 42 U.S.C. §1983, to redress deprivations of constitutional rights under color of state law.

2. The amount in controversy exceeds $10,000.00 exclusive of costs and interests.

Parties

3. Plaintiff Wayne Klug resides at 308 Brookline Street, Cambridge, Massachusetts. He was employed as a teacher and counselor at New Perspectives School, Inc., from December 1975 until his discharge on or about June 16, 1978.

4. Plaintiff Carolyn Anderson resides at 90 Putnam Avenue, Cambridge, Massachusetts. She was employed as a teacher and counselor at New Perspectives School, Inc. from June, 1975 until her discharge on or about June 16, 1978.

5. Plaintiff Paul Stein resides at 144 Pleasant Street, Cambridge, Massachusetts. He was employed as a teacher and counselor at New Perspectives School, Inc. from May 1977 until his discharge on or about June 16, 1978.

6. Plaintiff William Tilden resides at 64 Washington Court, Quincy, Massachusetts. He was employed as a teacher and counselor at New Perspectives School, Inc. from September, 1977 until his discharge on or about June 16, 1978.

7. Plaintiff Dawn Fonseca resides at 101 Western Avenue, Cambridge, Massachusetts. She was employed as a teacher and counselor at the New Perspectives School, Inc., from September, 1977, until her discharge on or about June 9, 1978.

8. Defendant New Perspectives School, Inc. (hereinafter referred to as the School) is incorporated under the laws of the Commonwealth of Massachusetts, and provides public high school facilities for those students in the Commonwealth who have had difficulty in a traditional high school. It is funded and regulated by local, state, and federal governments and has

as its principal place of business, 74 Green Street, Brookline, Massachusetts. James W. Schlesinger is President of the Corporation.

9. Defendant Sandra Kohn is a resident of Brookline, Massachusetts, and the Staff Director of the New Perspectives School, Inc. As such she is responsible for the day to day operation of the school, including initial decisions as to hiring and discharge. In this capacity, her principal place of business is 74 Green Street, Brookline, Massachusetts.

10. Defendant James W. Schlesinger is a resident of Brookline, Massachusetts, and the President of the Corporation and Chairman of the Board of Directors of the New Perspectives School, Inc. He resides at 215 Clark Road, Brookline, Massachusetts, and has his principal place of business at 74 Green Street, Brookline, Massachusetts.

11. Defendants Stephen Goldenberg, Joseph Gartner, Joanne Neiman, David Bachrach, Rodney Jackson, Rina Wald Spence, Susan Alford, Rhoda Goodwin, Rita Hamberg, Tonia Yee, and Edward Zarsky are members of the Board of Directors (hereinafter referred to as the Board) of the New Perspectives School, Inc. In this capacity they are responsible for the overall operation of the School. Their principal place of business in this capacity is 74 Green Street, Brookline, Massachusetts.

Statement of Facts

12. The plaintiffs were each employed as teachers and counselors at the New Perspectives School, Inc. for the periods of time stated in paragraphs 3-7 above. Their duties consisted primarily of teaching students, counseling students with regard to personal matters, attending staff meetings, and certain administrative duties.

13. Based on the operation and past practice of the School, all the plaintiffs had a reasonable expectation of continued employment, terminable only upon just cause shown.

14. The School is a non-profit Massachusetts corporation which provides tuition-free education to young people who have had difficulty completing high school level study in other public schools. Almost all of the students at the School are referred or sent to the School by the Massachusetts Department of Education or a subordinate state agency, the Division of Youth Services, or some other local or state agency.

15. The School is funded primarily through public funds received from the Commonwealth of Massachusetts through the Committee on Criminal Justice; the Massachusetts Department of Mental Health through the Division of Drug Rehabilitation; and the Massachusetts Department of Education through the Chapter 766 Program. The School also receives funding through the federal Law Enforcement Assistance Agency, and through the Comprehensive Employment and Training Act.

16. The School is accredited and regulated by the state Department of Education, and high school diplomas are certified by the School Committee of the Town of Brookline.

17. The School is regulated through statutes and regulations and funding criteria of each of the funding agencies.

18. The School functions as part of the Commonwealth's educational system and as part of the juvenile delinquency and drug abuse program sponsored by the Commonwealth and the United States.

19. Prior to the dates of their termination, none of the plaintiffs had received any warnings from the Director, Sandra Kohn, or the Board, or the officers of the Corporation, regarding their employment performance. Upon information and belief, the plaintiffs' performance in their work at the School was satisfactory.

20. For at least the past one and a half years there has been considerable discord among the administration, faculty, and students at the School, manifested by the resignation of over half the faculty, the dismantling of the student-faculty council by defendant Kohn, and racial antagonism.

21. Prior to their discharges and following the resignation of a black counselor at the School in January, 1978, each of the five plaintiffs had at various times discussed with defendant Kohn, Director of the School, the problems and tensions existing at the School and suggestions for how the Director and the staff could resolve these problems. The plaintiffs believed it was their professional responsibility, as well as an expression of their concern about the School and the students, to bring these matters to the Director's attention.

22. Despite their good faith attempts to bring these problems to the attention of defendant Kohn on numerous occasions, Ms. Kohn was not receptive to their concerns and generally dismissed and ridiculed their concerns.

23. On May 22, 1978, the plaintiffs delivered a letter to defendant Schlesinger, chairman of the Board, and to a number of the members of the Board, summarizing their concerns and their criticisms of defendant Kohn, and requesting that Ms. Kohn resign (see Exhibit A). That same day the plaintiffs delivered a virtually identical letter to defendant Kohn.

24. The following day, May 23, 1978, the plaintiffs orally informed a number of the Board members that they would provide additional details to substantiate their criticisms.

25. Upon information and belief, on May 23, 1978, the defendant members of the Board of Directors, at their regularly scheduled meeting, refused to conduct any investigation or further inquiry into the matters raised by the plaintiffs, and voted to give defendant Kohn full support and confidence.

26. On or about June 6, 1978, the plaintiffs submitted to the Board of Directors a detailed affidavit fully explicating their criticisms of defendant Kohn. (Exhibit B).

27. On or about June 5, 1978, a number of students at the School picketed defendant Schlesinger's house to protest conditions at the School and to request defendant Kohn's resignation.

28. On or about June 6, 1978, defendant Kohn at a staff meeting directed all staff members to tell the students who had

picketed and all other students that defendant Schlesinger had decreed that picketing constituted a disturbance in the neighborhood, that creating a disturbance in the neighborhood was against the policy of the Board, and that consequently, any student who picketed the school would be suspended immediately.

29. On or about June 6, 1978, each of the plaintiffs who was responsible for counseling students who had participated in said picketing informed said students of the statements of defendant Schlesinger, as instructed by defendant Kohn.

30. On or about June 8, 1978, the plaintiffs had a meeting with defendant Kohn in which they informed her that two of them had spoken with a lawyer and, based on the lawyer's advice, believed that the order prohibiting the students from picketing was unconstitutional and that they might be subject to civil liability if they instructed the students as ordered by defendant Kohn. The plaintiffs further stated to her that consequently, if asked by students as to whether said prohibition was constitutional, they would reply that it was their belief that it was not constitutional.

31. Later that day, June 8, 1978, defendant Kohn called each plaintiff into her office individually and ordered them to continue to tell students that defendant Schlesinger prohibited any picketing and that any student who picketed would be suspended immediately. She further ordered the plaintiffs not to tell students that they believed the prohibition against picketing to be unconstitutional, if asked, or else she would be forced to take "appropriate action."

32. On or about June 10, 1978, plaintiff Dawn Fonseca received a letter from defendant Schlesinger, terminating her employment at the School, in that he stated that he would not allow her to withdraw her previous tender of resignation. (See Exhibit C).

33. On or about June 15, 1978, a letter to the editor appeared in the Brookline Chronicle, signed by the plaintiffs, in

response to an article in said paper a week earlier reporting certain statements of several defendant Board members regarding events at the School. The letter of the plaintiffs was an attempt to correct certain inaccurate or untrue statements in the previous article, including statements about the circumstances surrounding the prohibition of picketing by students. In said letter, the plaintiffs stated, in part, that they believed the actions of defendants Kohn and Schlesinger, in ordering the plaintiffs to participate in unconstitutional and illegal actions was a violation of the plaintiffs' right to freedom of speech under the First Amendment. (See Exhibit D).

34. Also on June 15, 1978, the plaintiffs delivered to defendant Schlesinger a letter stating in part that they had contacted and were in the process of joining a labor organization for the purposes of representation and collective bargaining. (See Exhibit E). The plaintiffs also sent copies of said letter to defendant Kohn and to each member of the Board.

35. Upon information and belief, defendant Kohn consulted with defendant Schlesinger with regard to the termination of the plaintiffs prior to speaking with the plaintiffs on the morning of June 16, 1978.

36. On the morning of June 16, 1978, defendant Kohn called plaintiffs Klug, Anderson, Stein, and Tilden into her office separately and informed each of them that their employment at the School was terminated, effectively immediately. She orally informed each of them that the reason for their discharge was insubordination and disruption of the School's program.

37. Despite their repeated requests, the plaintiffs have received no written notice to date specifying the grounds for their discharges, nor an opportunity for a hearing before a fair and impartial body in which they could be represented by counsel and could examine the charges against them and present evidence in their own behalf.

38. The plaintiffs were not terminated for just cause, but due to their actions which were protected activities under the First Amendment to the United States Constitution and under the Massachusetts Labor Relations Act, Mass. General Laws chapter 151A.

39. Upon information and belief, since the plaintiffs' discharges, the defendants have placed or cause to be placed on the personnel records of each plaintiff statements that each of the plaintiffs was terminated due to his or her insubordination and disruption of the School's program, or the defendants will make such statements to prospective employers of the plaintiffs who seek references for the plaintiffs. Such allegations have placed or will place a stigma on the employment records of the plaintiffs and will prejudice and hinder their future employment prospects.

40. On or about July 7, 1978, the plaintiffs, through their attorney, requested by a letter to defendant Schlesinger and each of the other individual defendants that the plaintiffs be reinstated immediately and given full back pay, and requested written notice of the grounds for the discharges and the convening of an impartial grievance committee to conduct a full hearing in this matter. (Exhibit F).

41. Upon information and belief, on or about July 13, 1978, defendant Schlesinger appointed three of the defendant members of the Board of Directors as a grievance committee in this matter — Edward Zarsky, Joseph Gartner, and Rita Hamberg.

42. On or about July 20, 1978, the plaintiffs, through their attorney, notified defendant Schlesinger by letter that this grievance committee was not a fair, impartial, and unbiased body, in that several of its members had in the past expressed opposition to the plaintiffs and prejudgment of the issues in dispute. In said letter they again requested written notice of the charges against them and a statement as to the procedure to be used by any grievance committee. (See Exhibit G).

43. Neither the plaintiffs nor their attorney has received any oral or written response to either of their letters.

44. The plaintiffs have exhausted all available administrative remedies.

45. Upon information and belief, the defendants have started advertising for and hiring new staff to replace the plaintiffs.

First Claim

46. The defendants' actions in terminating the plaintiffs' employment have violated their rights to freedom of speech, contrary to the guarantees of the First, Fifth, and Fourteenth Amendments to the United States Constitution, in that plaintiffs were discharged for the legitimate exercise of their rights to freedom of speech. Said violations were wilful and malicious.

Second Claim

47. Plaintiffs have an entitlement to the position from which they were discharged, creating a property and liberty interest in their positions protected by the Due Process and Equal Protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

48. Said discharges from employment without prior notice, written statements of the grounds for the discharges, and a full and fair hearing violated these rights.

Third Claim

49. The plaintiffs' personnel records carry the stigma of defendants' false allegations and thereby prejudice their future employment, in violation of the Due Process and Equal Protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

Request for Relief

WHEREFORE, the plaintiffs request this Court to enter a judgment as follows:

1) A temporary restraining order directing the immediate reinstatement of all plaintiffs with full back pay;

2) A preliminary injunction directing the reinstatement of the plaintiffs with full back pay pending a final determination of this action;

3) A permanent injunction against the acts complained of in this complaint;

4) A judgment for full back pay plus interest for each plaintiff, from the date of each plaintiff's discharge;

5) An award of compensatory and punitive damages for each plaintiff in the amount of $50,000.00, to be jointly and severally assessed against the defendants;

6) An order directing the defendants to remove all false allegations from all records and enjoining the defendants from making similar allegations in any form to any person;

7) A declaratory judgment that the acts of the defendant complained of were illegal;

8) A declaratory judgment that plaintiffs cannot be terminated for the proper exercise of their First Amendment rights.

9) A declaratory judgment that the plaintiffs may not be discharged without prior notice and a prior appropriate hearing consonant with the guarantees of due process and equal protection.

10) An award of reasonable attorney's fees and the costs of bringing this action;

11) Such other and further relief as this Court deems just and proper.

By their attorney,

Kurt M. Pressman
Goldstein & Pressman
678 Massachusetts Ave.
Cambridge, MA 02139
Tel. 492-8473

We, Wayne Klug, Carolyn Anderson, Paul Stein, William Tilden, and Dawn Fonseca, hereby certify that we, each for him or her self, have read the foregoing complaint and that it is true and accurate to the best of my knowledge, except for those statements made upon information and belief, and as to those they are true to the best of our information and belief.

Signed and sworn to under the pains and penalties of perjury this 1st day of August, 1978.

s/WAYNE KLUG
Wayne Klug

s/WILLIAM TILDEN
William Tilden

s/CAROLYN ANDERSON
Carolyn Anderson

s/DAWN FONSECA
Dawn Fonseca

s/PAUL STEIN
Paul Stein

Then personally appeared the above-named Wayne Klug, Carolyn Anderson, Paul Stein, William Tilden, and Dawn Fonseca, and acknowledged that the foregoing instrument was their free act and deed, each for himself or herself, before me this ____ day of August, 1978.

ILLEGIBLE

Notary Public
My commission expires:

EXHIBIT A

MAY 22, 1978

Dear Board of Directors,

We met to talk about the school's problems as we see them.

The school's ability to provide services has been seriously hindered and, in some cases, halted altogether. Students mistrust the counselling and resist classroom instruction. The school is not able to offer them meaningful alternatives to the negative peer group pressure to abuse drugs. The students are angry and demoralized. Attrition is absurdly high. All the staff agrees the students are not being served.

The staff also agrees that its own fragmentation has been a source of these problems. Attempts to deal with that fragmentation have failed repeatedly. We believe that not only has the Director, in various ways, undermined these attempts, but that the fragmentation itself has been caused by the failure of Sandy Kohn's direction.

As we see it, those failures include the following:

1- The Director's inability to administer the program; specifically, her inability to anticipate and effectively deal with problems before they reach crisis proportions; her indecisiveness; and her inability to exercise authority.

2- The Director's undermining of staff effectiveness; specifically, undermining individuals; preventing cohesiveness; and offering inconsistent supervision and discipline of staff members.

3- The Director's inappropriate behavior toward, and inconsistent discipline of, students.

4- The Director's insensitivity to issues of race.

5- And in general, a variety of other inappropriate, disrespectful, and unprofessional behaviors.

All of these matters have been discussed with the Director in more specific detail by some or all of us, to no avail. This compels us to the unpleasant but undeniable conclusion that the only prospect for the recovery of the New Perspectives School program lies in the Director's immediate resignation.

We have respectfully requested that Ms. Kohn resign as Director.

Signed,
s/Dawn Fonseca
s/Paul Stein
s/William Tilden
s/Wayne Klug
s/Carolyn Anderson
New Perspective School
staff members

EXHIBIT B

AFFIDAVIT
SUBMITTED TO THE BOARD OF DIRECTORS OF NEW PERSPECTIVES SCHOOL, INC.
by

Carolyn Anderson,
Dawn Fonseca,
Wayne Klug,
Paul Stein,
and William Tilden,
Counselors and Teachers at
New Perspectives School, Inc.

A variety of reasons compel us to request that the Board remove Ms. Sandra Kohn as director of New Perspectives School. These reasons may be grouped into six main categories, which we now propose to discuss in detail.

I. THE DIRECTOR'S INABILITY TO ADMINISTER THE PROGRAM.

A. *Her inability to anticipate and effectively deal with problems before they reach crisis proportions.* Ms. Kohn's direction is characterized by a lack of forethought or long-range planning. This has often given rise to problems which might otherwise have been avoided. Once presented with these problems, furthermore, Ms. Kohn's incapacity to recognize and effectively respond to them has thrown the school into crisis after crisis. We cite the following examples:

1) Ms. Kohn's hiring reflects no long-range planning for the school's future staffing needs, especially with respect to the remedial and math components. To complicate this problem, Ms. Kohn's intake decisions have produced many more remedial students than the staff is properly equipped to handle. She has withheld information and discouraged discussions pertaining to staffing needs. For example, staff discussions concerning the

growth of the math department and the feasibility of seeking an MSW were terminated and called inappropriate by her.

2) With regard to students' specific needs, in April Ms. Kohn declared "We've ignored the drug issue so far this year. I'm afraid we've been rather neglectful of a major part of our program."

3) Ms. Kohn has formulated no guidelines for dealing with theft by students despite repeated appeals from staff members and repeated instances of stealing.

4) In her approval of the plan for a student senate, Ms. Kohn ignored the need for explicit written guidelines confining students strictly to non-administrative matters. Consequently, students became confrontative and angry about her attempt to alter the senate by-laws retroactively, in what they perceived as an arbitrary limitation. (See point 17.)

5) Ms. Kohn identified, but subsequently refused to deal with, the conflict experienced by several of her counselees between her roles as their counselor and director of the school. To a worker from another agency Ms. Kohn related this problem with respect to one of her counselees, and to the staff as a whole with respect to another when she said "It is extremely difficult for (one student) that her counselor is also the director, and it's very difficult for me too."

6) Despite the urging of staff members, Ms. Kohn refused to confront and provide answers to questions raised by students. In one case, overriding the suggestion of staff members that one student was acting as a spokesperson for others, Ms. Kohn portrayed that student as the only interested party and dismissed her concerns as those of a borderline personality.

7) When Ms. Kohn finally convened a special meeting to discuss staff discontents, as reflected in Mr. McLean's

letter, she undermined the second and third follow-up meetings by stating that she thought they would be "unproductive" and that "I do not want to be here." By doing so, she abdicated her responsibility to investigate and resolve these issues.

8) Ms. Kohn permitted Mr. McLean to receive a letter from the Board of Directors concerning his performance without his knowledge that she intended to bring this issue to their attention, without his foreknowledge that such a letter would be sent to him, and without any formal disciplinary actions having previously been taken. This precipitated Mr. McLean's resignation.

9) Ms. Kohn neglected to fully apprise Doctor Michael Good of the seriousness of her complaints about his performance such that he responded with shock to his termination as of June 30. Consequently, he resigned immediately, and the staff was left without a psychiatric consultant for three weeks.

10) Ms. Kohn refused to grant Ms. Fonseca a meeting with herself and Mr. Tilden for the purpose of clarifying a remark she made to Mr. Tilden maligning Ms. Fonseca. After Ms. Fonseca had resigned, Ms. Kohn finally summoned Ms. Fonseca and Mr. Tilden to her office, became agitated, and denounced Mr. Tilden as a liar.

11) At one staff meeting the question arose as to whether certain staff members had been talking behind Mr. Stein's back. During this sensitive discussion, Ms. Kohn abrubtly left the room for five minutes, re-entered noisily, further interrupting the discussion with remarks about students who had arrived in the building, changed the topic to the ability of students to split the staff, claimed ignorance of the whole matter being discussed, cut-off the discussion, and then dismissed the staff meeting. The issue was never resolved.

12) When at one meeting the staff pressed for Ms.

Kohn's recognition of issues raised in Mr. McLean's resignation letter — issues of racism, disrespect, deceit, favoritism — Ms. Kohn responded by saying "There's no way you can run a program and deal with all these things."

13) Ms. Kohn disregarded the seriousness and made no attempt to deal with issues raised in Mr. McLean's resignation letter until months later when one staff member wrote a letter to the Board concerning these issues and four other staff attended the April Board meeting.

14) Ms. Kohn has repeatedly acknowledged fragmentation among the staff. At three separate meetings in particular, she remarked that "the staff is definitely split," "the staff is split and it has been this way for over a year," and the problems arising from the split were a "deja vu" that recurred periodically.

15) Ms. Kohn has failed to systematically document long-range data concerning counseling attendance, class attrition, and total attrition rates. This lack of records prevents any analysis, study, and resolution of programmatic problems, such as the presently high attrition rate, as well as any standardized means of assessing whether services are successfully being provided.

B. *Her indecisiveness and inability to exercise authority.* Ms. Kohn's direction is further characterized by a style in which crises derive from emotionally-based, then arbitrarily reversed, decisions and directives. The director's incapacity to exercise the authority of her position compounds this problem.

16) Despite her usual insistence that the staff is split, on at least one occasion Ms. Kohn denied this and implied that the notion had been invented by another staff member. In a March staff meeting, she challenged Mr. Tilden to defend his view that the staff was split.

17) For more than a year, Ms. Kohn declared that under no conditions would she entertain the possibility of a student council. In the fall, Ms. Kohn discouraged Ms. Fonseca from researching how psychiatric institutions use self-government as a therapeutic tool, and in other ways made it clear to the staff that a student council was "out of the question". Neither this position nor her subsequent reversal reflected any coherent theoretical motivation compelling her to principled action, but rather appeared to be spontaneous reactions, variously, to student, staff, and Board pressures.

Her indecisive attitude toward the council has subsequently surfaced as a confused vision of what the student senate should be — forcing her to limit the scope of the senate as a reaction to student requests which she felt were intolerable. Rather than simply denying permission, she labelled the student requests as inappropriate: "The senate should not deal with administrative matters," she said.

But this only worsened the problem. Because this statement also lacked definition, students didn't know what "administrative matters" meant. They were angered by the randomness of what was forbidden and permitted. Why, for instance, were financial matters considered administrative, while fund-raising was not? Why was *advice* on hiring considered administrative, while advice on curriculum and program development was not?

The upshot is that the growth of the senate has been jeopardized and student mistrust and hostility toward both Ms. Kohn and the staff has been hightened.

18) In January Ms. Kohn delegated to the staff the responsibility to develop a procedure to hire new staff members. The staff voted on and approved a process which was presented to Ms. Kohn for implementation. Rather than rejecting the proposal outright, however, she

attached an addendum which devitalized the process. In either case, her response reflected a distrust of part, if not all, of the staff.

When Mr. Stein and Mr. Tilden then requested that they be excused from the whole interviewing process, Ms. Kohn consented. Later she revoked that consent. Later still, she re-gave consent by disposing of the process entirely and replacing it with a new one of her own which effectively allowed anyone who so wished to be excused. The new procedure, subsequently, was utilized in hiring Mr. Gary Jones but not in hiring Dr. Mogul.

Ms. Kohn's private reaction to Mr. Stein was to censure him for discussing the issue of hiring in the first place — even though she herself had directed the staff to address the problem — and to upbraid him for "not doing the job you were hired for". But when Mr. Stein asked whether she was criticizing his teaching or counseling, she said no.

19) Ms. Kohn has chaired hours of staff meetings which were wasted in pointless discussions. Rather than simply giving directives with the reasonable expectation that the staff will implement them, Ms. Kohn uses ostensibly "open" staff discussions as a vehicle by which staff decisions may be steered into rubber-stamping decisions already made by her. When in the course of such discussions, staff opinion has honestly diverged from hers, she has abrubtly terminated the discussion and announced that hers is the decision which will be implemented. At such times she has been unable to answer staff questions as to why she had conducted these discussions at all. The following three incidents will serve as examples:

a) Ms. Kohn opened a discussion of the student senate by calling for a report from the staff liaison members. Ms. McCleary and Mr. Stein reported that students had requested the senate be permitted to read resumes and meet candidates for the counsel-

ing position. The liaison committee had recommended this in turn to Ms. Kohn. Although Ms. Kohn was resistant to this idea, she encouraged the staff to discuss how it should respond to the students. Citing the advantages of watching students interact with potential candidates, Ms. Fonseca and Mr. Klug suggested that the student senate requests be granted, so long as its role remain strictly advisory.

Ms. Kohn became adamantly opposed to the idea. Ms. McCleary and Mr. Stein pointed out that Ms. Kohn had already refused the students' request. Mr. Tilden then asked if, as a result of this discussion, a staff decision to the contrary would have changed her mind. Ms. Kohn said no. When Mr. Stein asked why the discussion was held, Ms. Kohn did not answer.

b) Ms. Kohn opened another staff discussion about graduation plans. After a report from several staff members concerning how angry and upset the students had become with the decision to hold graduation in the building (due to limited seating capacity), Ms. Evans and Ms. Kohn remarked that that had been a staff decision. Correcting them, Ms. Fonseca, Ms. Anderson, and Mr. Klug pointed out that the entire staff had never made that decision.

Ms. Kohn suggested the students be told it was a staff decision anyway. Although Mr. Klug said he would have no difficulty abiding by any decisions concerning graduation on Ms. Kohn's part, he did not want such a controversial decision attributed to him when in fact no such staff decision had been made.

Ms. Kohn proposed that the staff tell students it had been a majority opinion, but Ms. Fonseca remarked that Ms. Kohn's proposal would set a

dangerous precedent in that the staff did not know if such was actually the case. Ms. Evans suggested that the staff take a vote to determine if a majority did in fact exist, but Mr. Tilden asked if a majority vote to the contrary would change Ms. Kohn's mind. Ms. Kohn said no. Mr. Stein asked, as before, why the discussion was held. Ms. Kohn did not answer.

c) The staff engaged in a long, heated discussion about what disciplinary measures should be taken against a student who had threatened a staff member. Staff later learned that 766 guidelines limited what action could be taken. Had Ms. Kohn originally informed the staff of these restrictions, the protracted and pointless argument could have been avoided.

20) Ms. Kohn informed the staff that the student involved in point #53 was henceforth out of the program. A week later, she informed the staff that the student would be returning.

21) Ms. Kohn pre-empted one staff meeting's agenda so the staff could discuss what she said was a crucial matter. She then turned to Mr. Richmond, encouraging him to speak. Mr. Richmond confronted Mr. McLean for having spoken privately to his (Mr. Richmond's) black counselee and claimed this had caused a deterioration in that counseling relationship. Mr. Richmond demanded to know why Mr. McLean had been speaking to the student and what he had been speaking about.

A long, heated discussion ensued in which Mr. McLean was indicted for undermining the counseling process and encouraging a student to split staff members. Mr. McLean left the meeting feeling angry and unjustly attacked by many staff members and the director.

A few weeks later, Ms. Kohn admitted that she had previous to that discussion given Mr. McLean permission

to speak regularly with black students who were not his counselees. However, at that time, she refused to discuss it any further. On a separate occasion, she also claimed that it was inappropriate to have brought before the whole staff an issue concerning only two staff members.

22) Ms. Kohn said she had difficulty denying student requests for loans. She needed the Board to make a policy forbidding loans by which she and the staff could gain the strength to refuse such requests, she said. Some staff pointed out that this policy would be superfluous, questioning staff inability to set such limits.

23) After the school was broken into last fall, Ms. Kohn gave to police the names of several students whom she informed them were angry at the school. In staff meeting later that day, a decision was made to tell the students involved that their names had been given to the police. Ms. Kohn announced that she would carry out this duty. However, Ms. Kohn never did tell the students. One student found out through his counselor, and as a result an angry and ugly scene occurred at the next all-school meeting when students accused Ms. Kohn not only of having implicated them but of having done so behind their backs.

24) In preparing for the January graduation, Ms. Kohn decided to deny permission to speak to a particular student who she had reason to believe would otherwise make some angry remarks. At graduation, when asked, she spontaneously reversed herself and allowed the student to speak. The speech was indeed angry; the Chairman of the Board was obliged to step in and cut the student short, as Ms. Kohn made no attempt to control him. The speech had ruined graduation for many students, their families, and staff.

25) In anticipation of another angry speech which she could not control, for some time Ms. Kohn considered the

possibility of not holding a spring graduation ceremony at all. In a discussion concerning prospects for the June ceremony, Ms. Kohn declared "I cannot control graduation. If someone else wants to do it, fine. But I can't take (a certain student) by the hand and tell him to sit down."

26) In January, Ms. Kohn took no disciplinary action about Mr. McLean's lateness. Instead, she went to the Board and asked it to act.

27) After requiring the staff to convene a special meeting to deal with problems in the program, Ms. Kohn subsequently said that she did not "have the strength to say no" to that staff forum, and said that she would have to sit through it.

28) After a brief and unresolved discussion about racism in the program, Ms. Kohn assigned to another, black staff member the responsibility of continuing the discussion at another date. "Dawn, you should bring this up again when you think it's appropriate." Ms. Fonseca later told Ms. Kohn that she did not think she should take the burden of that responsibility alone, that everyone must show a willingness to confront the subject, and that that willingness had to come from the initiative of the director. Subsequently, the issue was not dealt with again.

29) At the end of last summer, Ms. Kohn complained to Mr. Harmon that he had not adequately confronted racism on the staff. But six months later, Ms. Kohn did not support Mr. McLean's effort to confront racism.

30) After she had fired Dr. Good, Ms. Kohn did not want to meet with him for his last appointment. She agreed to do so only after several staff members convinced her it would lack professionalism to avoid this last meeting.

31) Ms. Kohn requested that Ms. Anderson speak to Mr. McLean about his lateness problem, but later, when

she discovered that Ms. Anderson had done so, blasted her for having talked about Ms. Kohn behind her back.

II. The Director's Undermining of Staff Effectiveness.

A. *Her undermining of individuals on the staff.* Ms. Kohn frequently makes off-handed remarks to individual staff members which negate or dismiss their contribution to the program. Worse than this, Ms. Kohn has divided and prejudiced staff members against each other by talking about them behind their backs. These have not been rational comments leading to programmatic solutions of particular problems, but rather have been her subjective criticism of staff members' personal lives or attacks on their integrity.

32) Calling Mr. Stein into her office in response to his earlier-expressed concerns about the hiring procedure, Ms. Kohn declared "You wouldn't have gotten hired if it wasn't for this process." She further accused him of an inability to separate himself from his students, claiming that he was acting exactly like (one student) "who quit her job because they wouldn't make her manager," and went on to assert that he was "falling apart", especially in the last ten days.

33) On one occasion in January, Ms. Kohn disregarded a suggestion of Mr. Tilden's by claiming that he was "middle class".

34) In one March staff meeting, in comparing the different investments of staff members into the various components of the program, Ms. Kohn asked rhetorically "Does Wayne care about the counseling? No."

35) In the incident concerning Mr. McLean, Mr. Richmond, and Mr. Richmond's counselee (cited in point #21), Ms. Kohn publically chastised Mr. McLean for his inappropriate meeting with another staff member's counselee and for his alleged naivete for believing the stu-

dent's desire to meet with him reflected a racial need. As we noted earlier, Ms. Kohn later admitted that she had given Mr. McLean permission to see black students in this fashion.

36) Ms. Kohn has made the following comments to and about a variety of staff and Board members as listed below:

a) At various times Ms. Kohn said to Mr. Tilden about *Ms. Fonseca*: "She is more middle class than the rest of them."

—"She's too middle class to be black."

—"I could never give her hard-core black kids; Dawn is just like (one black student's) mother."

Mr. Harmon: "The reason he couldn't deal with (one black student) was that he hated his own blackness."

—"He had trouble with fat black women."

Ms. Anderson: "Stay away from her; she should leave . . . She's been my biggest disappointment, I've tried so hard with her . . . I would fire her if I could."

Mr. Klug: "I have a hard time dealing with his naivete."

Ms. Meshon: "She's unable to handle certain kids."

Mr. Richmond: "He needs help . . . I thought I was going to be able to depend on him more."

Mr. McLean: "Keep an eye on Cal . . . did you notice how he spoke up too fast? . . . I'm not sure about keeping him on."

—"Why has a 37 year-old man been out of work for a year and a half with a wife and kids?"

b) At various times Ms. Kohn said to Mr. Klug about

Ms. Evans: "She's weak and needs a strong man to support her."

Ms. Anderson: "She needs to feel she has authority over someone, so I'm going to let her be head of maintenance."
Mr. Richmond: "He feels just terrible about his teaching. He's weak and he needs your support, Wayne."
Mr. McLean: "He's an angry black man who came out of the black thing in the sixties."
(one Board member): "He's very angry. You know he's married to a white woman . . . he's got problems with his blackness."
Mr. Behn: "Dick and I worked very closely together in the beginning, but then he went cuckoo and lost touch with reality."
Mr. Atherton: "He's a racist and an anti-semite."
Mr. Hogarth: "You know he has a terrible drinking problem and this school is all he's got."
Ms. Howe: "The way she dresses and carries herself is a come-on to students."

c) At various times Ms. Kohn said to Mr. Stein about
Ms. Evans: "Laura is weak . . . she can't handle the authority by herself."
Mr. Harmon: "Jesse is a middle class black man."
(one Board member): "He has his own problems with his blackness."
Mr. Tilden: "I called him a racist and I meant it."
Mr. Atherton: "He is a racist and an anti-semite."

d) At various times Ms. Kohn said to Ms. Anderson about
Mr. Klug: "There's something wrong with him, being on a CETA job at his age."
—"What should I do about it? He's going to adopt (one female student)."
Mr. Behn: "He's got a real problem and you should talk to him."

B. *Her Undermining of Staff Cohesiveness.* In contrast to specific comments made about individuals behind their backs, Ms. Kohn frequently makes generalized criticisms of problems or deficiencies in the staff. Her refusal to specify who or what she means heightens mutual mistrust and suspicions among the staff.

37) To various staff meetings Ms. Kohn has declared

a) "There is definitely racism in this staff."

b) "If people need personal therapy, they should go outside for it."

c) "There's too much talking going on behind my back . . . there are trysts going on all over the place."

d) "You don't know nine-tenths of what goes on in this program."

e) "I have indications that people have repeated what goes on here outside of these meetings . . . (but) let's table that."

f) "I don't trust everyone in this program equally . . . personally or professionally."

g) "I ask your opinions only out of courtesy."

h) "Staff people are maligning me."

38) To various individual staff members Ms. Kohn has made similar comments.

a) In response to Mr. McLean's accusation that she spoke vulgarly to students, Ms. Kohn told Mr. Klug: "Everybody on the staff is vulgar about students."

b) To Mr. Stein she insisted that staff members were for months "conspiring to polarize the staff" and were "directing students". She added that staff members "had problems with authority".

c) To Ms. Anderson she said "Staff people are maligning me."

d) To Mr. Klug Ms. Kohn stated "The staff have a problem with authority. Some people can't take no for an answer. They're acting just like students."

e) To Ms. Fonseca Ms. Kohn said "Some staff members are not sharing everything about their counselees with me."

f) During the second special staff meeting in May, called to discuss problems in the school, Ms. Kohn said under her breath "I can't wait to get out of here . . . only — minutes left."

C. *Her Inconsistent Supervision and Discipline of Staff.* Ms. Kohn's discipline of staff members is inequitable and her supervision is uneven, lacking standard methods of evaluation of both staff members and the program as a whole.

39) In response to Mr. Hogarth's lateness, Ms. Kohn took no action. In response to Mr. McLean's lateness problems, however, Ms. Kohn went directly to the Board.

40) At different times Mr. Klug, Ms. Fonseca, and Mr. McLean had complained to Ms. Kohn about Ms. Evans' disrespectful and confrontative behavior toward them. Ms. Kohn did not follow up these complaints with any action.

41) In one session as quoted above, Ms. Kohn told Mr. Stein "You're not doing the job you were hired for." When Mr. Stein questioned her about this in the following supervision session, she replied "I never said you weren't doing your job."

42) Ms. Kohn has given school funds to pay for graduate courses to certain staff members, while withholding them from others.

43) On one occasion, Ms. Kohn failed to inform Ms. Anderson of an important development concerning her counselee, that student's mother, Mr. Harmon, and Ms. Kohn. For a year after that, Ms. Kohn was offered only intermittent supervision to Ms. Anderson, sometimes allowing weeks to pass by without holding a session. Only upon Ms. Anderson's insistence has Ms. Kohn conducted supervision of her with any regularity.

44) On several occasions, Ms. Kohn has scheduled appointments during Ms. Anderson's, Mr. Klug's, and Mr. Tilden's weekly supervision time without previously informing them.

45) To date, Ms. Kohn has failed to give Ms. Anderson her evaluation in spite of the fact that it is a year since the evaluation policy was instituted.

46) Ms. Kohn offers no detailed, systematic evaluation of each teacher's courses and teaching styles — in terms of curriculum, course goals, student interest, and overall learning — in order to aid and encourage teachers with a critical eye. At one point, Ms. Anderson confronted Ms. Kohn about this, and her response was to say that people on the staff could not deal with critical evaluation.

47) Ms. Kohn's slack in academic supervision stands in striking contrast to the extensive psychiatric supervision. This is reflected in an attitude that discourages outreach to other alternative schools while encouraging only drug— and counseling-related contacts. A year ago, to dramatize her opposition to such outreach, she pulled down a document by the National Coalition of Alternative Schools from the bulletin board where it had been posted and, in front of the whole staff, angrily ripped it up.

48) In signing up her counselees for classes, Ms. Kohn consistently has overbooked courses in disregard of the limits set by her and the individual teachers as to the number of students who may enroll in classes.

49) Ms. Kohn had been informed by Mr. McLean of a difficulty he had experienced involving Mr. Tilden, which concerned the underlying racial dynamics between Mr. Tilden and a student. Mr. McLean and Mr. Tilden had later resolved this conflict between themselves. Ms. Kohn did not mention the incident to Mr. Tilden until months later after Mr. McLean had left

and she herself had been accused of racism, and then only did so vindictively and in a manner not clinically justified.

III. The Director's Inappropriate Behavior Toward, And Inconsistent Discipline Of, Students.

Ms. Kohn's behavior toward students, both personally and through instructions to counselors, reflects, in conjunction with other subjective influences, her various sympathies and antipathies toward the students; it reflects neither a coherent policy on limits and discipline, nor a sense of what is appropriate for students to hear or know. In contrast to periodic appeals for limits which apply across the board, the notion that the school offers an "individualized program" appears to exist more as a smokescreen for Ms. Kohn's inconsistencies than as a theoretical basis for dealing with students. Ms. Kohn's incapacity as an administrator is further evidenced by her fear, in many cases, of meeting with students alone.

50) On the afternoon of graduation day last summer, Ms. Kohn called the sole graduate into full staff meeting and threatened to cancel the ceremony if ex-staff member Sheila Rendell-Baker attended. The student left the meeting crying. Ms. Kohn declared "It's important to keep (that student) sad."

51) As opposed to encouraging independence and maturity, Ms. Kohn's counseling is characterized by a consistent effort to create in her counselees an ongoing passive dependence. When in one recent staff meeting she described her relations with a counselee, psychiatric consultant Dr. Good warned Ms. Kohn: "You're mother-henning her."

In another incident prior to a school vacation, Ms. Kohn urged a second counselee to schedule an appointment withg her during that week. The student explained that her work schedule would prevent her from seeing Ms. Kohn, but offered to call her if a crisis came up. "But your whole life is a crisis," Ms. Kohn replied.

52) Ms. Kohn once frightened a counselee by insisting upon her own dramatically incorrect perception of events involving that student. This counselee had left the room during an all-school meeting, and upon returning had asked to be informed of what she had missed. Several minutes later, she was asked to leave the building on suspicion of being stoned. The next day, the student confronted Ms. Kohn, denying that she had been stoned. Ms. Kohn admitted to that possibility, she later explained to Mr. Klug, but cited the student's inappropriate behavior at the meeting as the real cause for the expulsion.

As partial evidence for this claim, Ms. Kohn insisted upon her own erroneous belief that the student had not at any point left the room the night before, and that by suggesting anything to the contrary, the student was demonstrating that she was indeed out of touch with reality. In response to this, the student made the rounds of staff and other students, seeking and gaining corroboration for her own memory of the events. Later still, as Ms. Kohn further explained to Mr. Klug, the student demanded an apology from her, and accused her of "trying to tell me I was crazy."

53) Ms. Kohn badly mismanaged a violent scene involving a potentially suicidal student. Following upon the incident cited in point #52, the same student became emotional and angry during a counseling appointment with Ms. Kohn, and ended the meeting by putting her fist through Ms. Kohn's office window. Ms. Kohn expelled her from the building without attempting to provide medical care. She later admitted to Mr. Klug "I know she was bleeding, Wayne, because I saw those drops of blood." Neither did she think later that night to check up on this counselee whom she herself insists is self-destructive. Ms. Kohn admitted to Mr. Klug "It wouldn't have occurred to me to call her. I'm glad you called me up and suggested it."

Ms. Kohn ultimately did call the student, later explaining to Mr. Klug that she had initially been reluctant to do so "because I'm afraid of her violence". She added that she had failed to bring this counselee to a recognition of her feelings, in part, because "I'm absolutely petrified with her".

54) In an earlier incident involving the same student described in point #53, Ms. Kohn permitted to leave the building a counselee who had just taken a large quantity of penicillin capsules and had earlier that day cut her wrists. Ms. Kohn did not prevent the student from leaving, nor insist upon taking her to a hospital, until another staff member, Ms. McCleary, urged her to do so.

55) On hand to clean up the glass broken in the incident cited in point #53, Mr. Klug advised Ms. Kohn not to allow her next counselee to enter the office and observe the mess. Nevertheless, Ms. Kohn called her into the office, and did so — since she herself had been shaken by the incident — only to cancel the appointment. This second counselee, in turn, became upset by the sight and asked Ms. Kohn "How did your window get broken?" Unable to answer the question, Ms. Kohn's response was "Wayne's cleaning it up."

56) Ms. Kohn cricitized Mr. McLean in front of students. Answering questions about the charges made in Mr. McLean's resignation letter, Ms. Kohn at an all-school meeting denied that Mr. McLean had resigned for the reasons he had indicated. Rather he had left, she told the students, because of "personal problems".

57) Upon seeing (one black student) come into the school dressed expensively, Ms. Kohn asked him if he had stolen his clothes, she later told Ms. Fonseca.

58) As the justification for a disciplinary expulsion, Ms. Kohn consistently asserted that (one female student's) drug problem rendered her unable to function in a school

setting and warranted her enrollment in a residential drug treatment program. After her expulsion, however, and noting no difference in her behavior involving drugs, both Ms. Kohn and Ms. Evans, the student's counselor, attended a Core re-evaluation for this student, as a result of which she was placed in a regular public high school.

59) As noted in point #23, Ms. Kohn called the police after the building was broken into last fall. In response to a police inquiry as to whether there were students angry at the school, Ms. Kohn without consulting staff gave police the names of certain students. Not only did this action breach confidentiality, but her subjective judgment resulted in a violation of the trust these students had in the program to protect their interests, by unnecessarily exposing them to police investigations. From this incident, seemingly, dates the growing feeling among students that staff are somehow persecuting or conspiring against them. This was evidenced by the angry speech made during the January graduation by one of the students who had been named.

60) In one all-school meeting Ms. Kohn was confronted by a substantial number of students with charges of racism on the staff. During this discussion she declared "If you're asking me if there is racism on the staff in the program, the answer is definitely yes." This remark heightened the students' mistrust of the staff as a whole.

61) Ms. Kohn and the staff had made the decision not to read during an all-school meeting, and thereby give credence to, a letter some students had written about Ms. Kohn. During that meeting, however, Ms. Kohn handed one of her counselees the letter to be read aloud, causing an explosive confrontation.

62) In February, Ms. Kohn asked one graduate to leave the building; she did not make this request of another graduate who was present at the same time.

63) Ms. Kohn was informed by a staff member that (one black female student) had special remedial needs. In response to this appeal, Ms. Kohn replied "She has integrity and that will get her through life."

IV. The Director's Insensitivity To Issues Of Race.

Ms. Kohn has failed to confront the issues of race which underlie staff-staff, staff-student, and student-student dynamics — whether the context be in the classroom, in counseling, or in an informal setting. This insensitivity has generated an underlying negative tone concerning race and racism at the school.

64) Ms. Kohn has watched every black staff member resign from the program in anger. Not one has stayed for more than a year. In every case, furthermore, Ms. Kohn has been the target of that anger.

65) Ms. Kohn has made numerous statements about individual staff members which reflected an insensitivity to race. As has already been documented in point #36, she has referred to Ms. Fonseca, Mr. McLean, Mr. Harmon, and one Board member in this vein. As cited above, different individuals, in her view, have had problems with their blackness.

66) In discussing the difficulties that black students face at home, Ms. Kohn has on occasion referred to "the pathology of the black matriarchy".

67) As cited in point #28, Ms. Kohn delegated her responsibility to confront racism in the program to Ms. Fonseca. This reflected an insensitivity to Ms. Fonseca's precarious position as the only black staff member. Furthermore, when Ms. Fonseca expressed her discomfort with that role, Ms. Kohn never found time to bring up and approach the issue in staff. On one occasion, in fact, she said "We can't take school time to deal with this (racism and disrespect)."

68) Ms. Kohn refused to seriously entertain the notion that (a certain black student) might need a black counselor.

69) Ms. Kohn insisted that Ms. Fonseca and Mr. McLean be supervised one hour per week with respect to a minorities course they were to co-teach. Only in this case — one in which two black staff members were involved — was such close supervision demanded. Other teaching pairs — specifically Mr. Tilden and Ms. Ford, and Ms. Fonseca and Ms. Capuano — have co-taught courses and did not require such scrutiny.

70) As if to play down and justify the degree of racism on the staff at present, Ms. Kohn once claimed to Ms. Fonseca "If you think there is racism now, you should have been here before."

71) As cited in point #21, Ms. Kohn condoned a staff attack upon Mr. McLean for meeting informally with a black student and denied that the motivation for the meeting might have stemmed from the student's need for racial identification. Further, Ms. Kohn prevented a serious discussion of the pros and cons of such interactions in light of the program's counseling objectives.

72) On numerous occasions, Ms. Kohn has insisted that "I do not see color." To prove her point, she anecdotally tells of her friendship with an obese woman whose fatness, Ms. Kohn claims, she also does not "see". This comparison implies Ms. Kohn's perception of blackness as a malady or embarrassment best to be tactfully ignored. Ms. Kohn has also asserted that attention to racial dynamics in the students negates the seriousness of other adolescent problems and camouflages more pressing concerns. This response denies the special conflicts that black students must face concerning their cultural identity and sourse of self-esteem.

V. The Director's Inappropriate, Disrespectful, And Unprofessional Conduct.

Overall, Ms. Kohn displays behaviors grossly lacking in professionalism. These include breaches of confidentiality, random labelling of students, lying, and a lack of self-control.

A. *The Breach of Confidentiality.*

73) Ms. Kohn revealed to Ms. Fonseca information which Mr. Tilden had discussed with her in supervision. This information concerned conflicts Mr. Tilden had experienced with certain staff members and also facets of his personal upbringing.

74) Last summer, Ms. Kohn spoke freely (about one female student's) personal background in front of one of the tenants in the rear building.

75) Ms. Kohn allowed Ms. Fonseca and Mr. Richard Lee — who were at the time only candidates for positions at the school — to be parties to a confidential staff discussion of one student in the program.

76) As cited in points #23 and #59, Ms. Kohn released to police the names of students without the students' knowledge. This action violated various funding agencies' criteria which proscribe the release of information to law enforcement officials or agencies without the students' prior, informed consent.

B. *The Random Labelling of Students.* Ms. Kohn often uses psychological terminology to explain away student concerns as manifestations of behavioral problems.

77) At one all-school meeting, (one male student) had confronted her on a decision she had made and then after the meeting asked for her assistance on another matter. In a subsequent staff meeting, Ms. Kohn labelled him "schizophrenic".

78) Having been particularly outspoken and angry about the nature of student input at the school, another student was labelled "borderline" by Ms. Kohn. In a

subsequent staff meeting, the psychiatric consultant insisted that he did not see this student as borderline.

79) In another all-school meeting, (one female student) had angrily raised her concerns about the points cited by Mr. McLean in his letter of resignation. In a subsequent staff meeting, Ms. Kohn dismissed this confrontation as characteristic of a borderline personality.

C. *Her Abuse of Her Role As Staff Representative to the Board of Directors.* To the Board and to the staff, in turn, Ms. Kohn has presented as truth information that was either a misrepresentation or a lie.

80) With respect to Mr. McLean's lateness, one Board member questioned Ms. Kohn as to how she had dealt with lateness in the past. She replied that the "staff has not been late before". Mr. Hogarth had, in fact, been consistently late.

81) In answer to a Board member's question as to why the school was experiencing such a high attrition rate this term, Ms. Kohn replied that "the staff changed the absence policy". In fact, the absence policy had not been changed at all; only the lateness policy had been changed. Importantly, this policy had been instituted for the purpose of *reducing* attrition as well as lateness.

82) Although Ms. Kohn told the Board that approximately 45 students were matriculating at the school, there were at that point, in fact, only 34 students matriculating.

83) Ms. Kohn told the staff that the entire Board had been present at the meeting in which a decision had been made to send Mr. McLean a letter. Ms. Anderson, who had taken a telephone message from one Board member calling the school that night to say he could not attend, suggested that that Board member had been absent. Ms. Kohn denied this, stating "(That Board member) was there." In fact, that Board member, as well as others, had been absent.

84) Ms. Kohn told the staff that at its last general meeting the Board had made a decision not to institute a new policy on tuition money for staff members. When Mr. Stein, who had been present at that meeting, confronted Ms. Kohn on this statement, she declared that the decision in question had been made, rather, by a subcommittee of the Board.

D. *Her Presentation of False Information or Half-truths to Staff Members.*

85) Shortly after the psychiatric consultant had asserted that to his knowledge (one student) was not borderline, Ms. Kohn stated to the staff "(This student) is not a borderline, and I never thought he was." In fact, she had on a number of occasions referred to him as such.

86) Ms. Kohn claimed to Mr. Stein that, when the discussion first came up, no staff had objected to her decision to hold graduation in the building. In fact, at least three staff members had strongly objected.

87) Ms. Kohn lied to Ms. Fonseca either by telling her, on the one hand, that her remark "She's too middle class to be black" had been drawn out of context, or by telling her, on the other hand, that she had never made the remark at all.

88) Ms. Kohn told Mr. Klug that she did not know what Ms. Fonseca's resignation was about. The following day in staff meeting, Ms. Kohn revealed that she clearly understood the cause of Ms. Fonseca's resignation to stem from her mistrust of Ms. Kohn on issues of race.

89) In explaining an incident in which she had remained in an alcohol-serving restaurant in the presence of an under-age student, Ms. Kohn asserted to the staff that "Drinking with students had nothing to do with why Sheila Rendell-Baker was fired." It is a matter of fact, however, that Ms. Kohn reported to the Division of Employment Security that Ms. Rendell-Baker had been terminated for drinking with minors.

E. *Her Other Unprofessional Practices.*

90) Apart from hosting a perfunctory hour-long "parents' night" last fall, Ms. Kohn has consistently disregarded 766 regulations to the contrary and discouraged ongoing parental input into their children's education at New Perspectives. Ms. Kohn has repeatedly asserted that the parents are not interested, and has dismissed staff suggestions to the contrary by stating "It's the kids we're here to serve, not the parents."

91) Ms. Kohn's hiring and firing procedures have been brought into question on a number of occasions for displaying a lack of professionalism. For instance, she began interviewing for a new psychiatric consultant before Dr. Good had been informed of his termination.

92) Ms. Kohn has, at times, neglected to place advertisements in the paper for new staff openings, in violation of EEO guidelines.

93) Ms. Kohn has, at times, interviewed and presented to staff only one candidate to fill a position. This was the case for positions filled by Mr. Stein, Mr. McLean, and Mr. Jones.

94) Ms. Kohn created a situation which angered a student with a lie and caused a parent to call a staff member with concerns about racism. Ms. Kohn called a special staff meeting to discuss how students should be told about the resignation of three staff members, Ms. Fonseca, Ms. Evans, and Ms. McCleary. It was agreed that Ms. Fonseca would not discuss with the students her reasons for leaving, and, if asked, would respond that the question was inappropriate. When a staff member asked her if she would say that she was leaving to return to school, Ms. Fonseca replied that, since this was in fact not so, she was disinclined to lie.

The all-school meeting went as planned. After the meeting, however, a student approached Ms. Kohn and

asked her why Ms. Fonseca was leaving. As later reported by the student and corroborated by other students who witnessed the conversation, Ms. Kohn replied that she did not know why Ms. Fonseca was leaving because Ms. Fonseca had not told her.

The student later approached Ms. Fonseca, who was unaware of his earlier encounter with Ms. Kohn, and asked her if Ms. Kohn knew why she was leaving. Ms. Fonseca said yes.

The student then returned to Ms. Kohn and in an emotional scene accused her of having lied to him. That evening he told his mother about the incident and about his belief that Ms. Fonseca was leaving because of racism. The student's parent then telephoned Ms. Fonseca.

The next day Ms. Fonseca went to Ms. Kohn to inform her about her conversation with the parent. But before she could recount the conversation, Ms. Kohn accused her of having set her up by telling the student that Ms. Kohn knew her reasons for leaving. "Why didn't you tell them you were going to school?" she asked, indicating her inability to handle potentially volatile situations in an honest and rational manner. Ms. Kohn then added that she did not in fact know why Ms. Fonseca was leaving.

At this point, Ms. Fonseca became upset and asked how Ms. Kohn could say such a thing when not only had Ms. Fonseca discussed her reasons for leaving in depth with Ms. Kohn, but had also summarized this discussion in her letter of resignation. Ms. Kohn ended the interview by requesting that Ms. Fonseca put what she wanted to say in writing. Ms. Fonseca was thereby prevented from relaying to Ms. Kohn the information she had set out to share with her in that interview.

F. *Her Lack of Self-Control.* Ms. Kohn has displayed a lack of self-control in coping with the school's problems. These outbursts have only served to heighten the tensions already existing in the program.

95) After one all-school meeting in which many students challenged Ms. Kohn on her recent decisions concerning graduation and the student senate, one student approached Ms. Kohn and asked if she was alright. She lost control of herself and burst into tears, upsetting the student with anxieties about her and the future of the program.

96) One afternoon Ms. Kohn went out of her office and yelled across the hall that (one student) was psychotic.

97) In the middle of the staff meeting concerning Mr. McLean's resignation, Ms. Kohn abrubtly gathered her papers and angrily left the meeting, halting the discussion and leaving the issues unresolved.

98) On other occasions, Ms. Kohn has broken down crying when asked about the nature of a certain decision or the source of staff discontent. These reactions have stemmed from her affinity to identify such confrontations as directed against her personally, instead of at the policy or incident at hand.

VI. The Director's Precipitation Of A School-Wide Crisis.

The incapacities, inconsistencies, insensitivities, and inappropriate behaviors cited here on the part of the director have together propelled the program into an unprecedented crisis, as a result of which — the director and entire staff agree — the program is presently unable to serve the needs of students.

Probably the strongest indicator of this failure is the attitude and behavior of the students themselves. Students have frequently articulated a growing sense that the staff are echoing an official line, covering up, misrepresenting, and outright lying to them about any and all issues of importance that may arise. This powerful apprehension of staff deceit and disrespect has undermined any programmatic basis for the trust which is essential if learning and growth are to occur.

Consequently, the students resist classroom instruction by many means: by unpreparedness, by feigned or real lack of interest in curricular materials, by inattention to class discussions, and by outright refusal to participate.

Likewise, students find it easy to avoid confronting personal issues. In addition to a widening pattern of late arrivals and missed appointments, students misuse personal counseling through an insistence on solving school problems before their own. The students' perception of their counselors as representatives of a dishonest and manipulative staff further reduces their willingness to work in trusting relationships with them.

A heightened cynicism and anxiety are evident among the students in their anticipation of having to cope with these dynamics on a daily basis. The much-increased incidence of drug abuse among them is the most outstanding consequence of that anxiety.

Students characterize peer pressure to use drugs at New Perspectives not as the exception but the rule. The school is not able to offer them meaningful alternatives to this pressure, and the students regard as a joke the school's portrayal of itself as a drug-free community.

This state of affairs finds its most unfortunate expression in the students' inclination to drop out of classes and leave the program altogether. Since the rate of attrition is the most concrete index of the school's ability to provide services, an examination of the statistics will prove instructive in this regard.

At the start of the spring 1978 term, students enrolled in classes which would offer them a total of 154 high school credits. Students lost or dropped 73 of these. This yields, to date, a 47% attrition rate from individual classes.

Students participating in the program at the start of the term numbered 47. To date, 18 have dropped out completely. With 29 students remaining, this yields a 38% attrition rate from the program as a whole.

The critical relationship between these statistics and the

problems earlier discussed remains self-evident. Applying symbolically to all the students is Ms. Kohn's remark about one who left: "We were too confusing and didn't fulfill her needs."

But it is not only the attrition of students by which the nature of the school's crisis may be judged. The staff, too, has suffered an unusually high turnover which further demoralizes the students: 12 staff members have resigned in the last year.

Two of the most recent have shared their reasons for leaving: Ms. Fonseca expressed her unwillingness to continue to "lend legitimacy to the failure" of the program, and cited what she saw as the insolubility of the school's problems under the present director. Ms. McCleary stated she was "fed up" with school problems—and warned staff members: "It's terrible what we're doing to the kids and ourselves." Characterizing her resignation as a case of "self-protection", she stated "the program is falling apart".

But if its problems have rendered the program inoperable, and the present director stands as the foremost obstacle to resolving them, then the director herself has consistently failed to recognize this fact. Exacerbating the crisis is Ms. Kohn's own inclination to thrust responsibility for these problems back upon the staff members who raised them as issues to consider. Repeatedly she has asserted that the staff are to blame for the problems which have brought the school to a virtual halt from want of effective leadership.

Thus the director aggravates two-fold the crisis of confidence. Indeed, Ms. Kohn quite frankly acknowledges the mutual lack of trust between herself and staff. And in this preclusive atmosphere the staff is left without means to solve its problems, which in the view of the administrative assistant threaten the very existence of the school.

This threat is already manifest in conditions which encourage not learning, but complacency; not counseling, but resistance; not drug-free, but self-indulgent, students; not a therapeutic educational community, but an extensive network of cynicism and mistrust.

Impeded by leadership which witnesses the crises to which its failure has given rise and dismisses them as manifestations of adolescent anger on the part of the staff, we appeal to the Board to remove the director as the only solution to the problems documented in these pages.

Each of us swears that this document was compiled on our own personal time and entirely off of New Perspectives School premises.

The foregoing statements are subscribed and sworn to this 6th day of June, 1978, on the personal knowledge of one or more of the undersigned.

s/CAROLYN ANDERSON
Carolyn Anderson

s/PAUL STEIN
Paul Stein

s/DAWN FONSECA
Dawn Fonseca

s/WILLIAM TILDEN
William Tilden

s/WAYNE KLUG
Wayne Klug

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS JUNE 6, 1978

Sworn and subscribed before me by the above-named Carolyn Anderson, Dawn Fonseca, Wayne Klug, Paul Stein, and William Tilden, this 6th day of June, 1978.

s/illegible
Notary Public
My commission expires
1/4/85

EXHIBIT C

NEW PERSPECTIVES SCHOOL, INC.
74 Green Street, Brookline, Massachusetts 02146

617-232-1958

June 9, 1978

Director Sandra Kohn

Ms. Dawn Fonseca
101 Western Avenue
Cambridge, MA 02139

Dear Ms. Fonseca:

Your letter of resignation, dated May 16, 1978, was received and the Board of Directors was informed of your intention to resign.

I accept your resignation and I release you from any commitment to work in the summer session whether we have found a replacement for you or not.

In accepting your resignation, I am, of course, rejecting your verbal offer to withdraw it. I would like to thank you for your services as a teacher in New Perspectives School.

Sincerely,
s/JAMES W. SCHLESINGER
James W. Schlesinger
President

EXHIBIT D

Brookline
Chronicle Citizen

THE BROOKLINE CHRONICLE THURSDAY, JUNE 15, 1978

June 22, 1978
CORRECTION

Due to a typographical error, a letter in last week's paper read that teachers at the New Perspectives school had expressed a "willingness to participate in an illegality". It should have stated they expressed an "unwillingness."

'Inaccuracies by Board of Directors'

As teachers and counselors at New Perspectives School, we wish to correct several inaccuracies expressed in your article by members of the school's Board of Directors.

The first is their claim that "problems at New Perspectives have been distorted and exaggerated by a small group of students." In truth, students have been petitioning the Board of Directors for a year and a half concerning matters of student input, organization, and other grievances. All petitions contained the signature of at least half, and in most cases a majority, of the student body.

Second, Dr. Zarsky's figures concerning the number of students being — or not being — served are in error. He suggests that the school fails to help 10 out of 30 students, implying that 30 is the normal school population. In fact, the number of students attending during the regular school year has always been much higher, usually exceeding 50.

At the start of this term, 47 students registered for classes. To date, 18 have dropped out of the program entirely. (With 29 students remaining, this yields a 38 percent attrition rate.) To the 10 he dismisses, Dr. Zarsky must add an additional 18. This means there are now 28 students — well more than half the original 47 — whom the school is not serving.

Third, Mr. Schlesinger contends that better employment opportunities and a scarcity of teachers willing to make long-term commitments to New Perspectives account for the high rate of staff turnover at the school.

Of the 14 staffers to leave New Perspectives in the last two years (excluding psychiatric consultants), only two were lured away by the prospect of more attractive employment opportunities available through graduate school programs. Of the remaining 12, two were fired, two found better jobs after having left N.P.S., four found comparable jobs, one found part-time employment in another field, and another three faced unemployment. Eight of these 14 staffers had served at New Perspectives for three to five years each.

Fourth, documented evidence refutes Mr. Schlesinger's denial that Ms. Kohn lied or broke confidence with students. We understand, in fact, that the student picketing was prompted by what the students claim was a lie Ms. Kohn told them about the reasons for one teacher's resignation. Further, we do not understand why Mr. Schlesinger denies a "conspiracy on the part of the administration to deceive students through distortion of the truth," when, so far as we know, students never claimed that such a conspiracy existed.

Fifth, race and its cultural ramifications are a part of any student's identity — especially that of minority students. It would therefore not be possible, despite Mr. Schlesinger's suggestion to the contrary, to base counseling policy on students' individual needs while excluding racial considerations.

Sixth, one of us attended several Board meetings during the year in which two students served on that body, and — contrary to Mr. Schlesinger's and Dr. Zarsky's claim — saw no evidence that student members proved disruptive to the functioning of the Board.

Seventh, Mr. Schlesinger and Dr. Zarsky assert that last year's student-staff council "didn't work." To the contrary, the student-staff council, on which one of us served, was not given a reasonable opportunity to work. The interrelationship of roles and responsibilities among council members and between the council and the school as a whole were still in the process of being defined — and its by-laws yet to be ratified — when Ms. Kohn abolishes it.

Eighth, Mr. Schlesinger asserts that the Board of Directors has investigated student complaints. We know of no formal complaints made by students to the Board within the last year. Nor do we know of any investigations — "cautious" or otherwise — of student complaints undertaken by the Board of Directors.

We would like to remark upon one final inaccuracy. Student picketers were threatened with suspension not by one counselor, but by several. Through Ms. Kohn, Mr. Schlesinger last Tuesday morning directed the entire staff to contact any of their counselees who had joined the picket in front of the school Monday night. We were directed to inform them that continued picketing would result in their immediate suspension. Staff members did so.

Legal counsel had informed us, we told Ms. Kohn on Thursday, that the order prohibiting picketing was unconstitutional and illegal. We explained to her our willingness to participate in an illegality and indicated that if students were to ask our legal opinion of the matter, we would share with them what our counsel had told us.

Later that day, Ms. Kohn ordered us as follows: that we were to continue to tell the students they would be suspended for picketing the school, and that we were not under any circumstances to tell them that that threat was illegal.

Hereby, we believe, Mr. Schlesinger and Ms. Kohn have violated our own First Amendment rights to free speech.

Carolyn Anderson
Dawn Fonseca
Wayne Klug
Paul Stein
Bill Tilden

EXHIBIT E

June 15, 1978

Mr. James W. Schlesinger
Chairman, Board of Directors
New Perspectives School
74 Green Street
Brookline, Massachusetts

Dear Mr. Schlesinger:

As you know, we are dissatisfied with the manner in which the New Perspectives School is being run and the manner in which we, as its employees, are being treated. For months we have attempted to solve these problems internally, but these efforts have failed.

This letter is to inform you that we have contacted, and are in the process of joining, a labor organization for the purposes of representation and collective bargaining. As soon as we have delegated a bargaining agent, we will request that the Board of Directors recognize it as such.

Sincerely,
s/Carolyn Anderson
s/Wayne Kluc
s/William Tilden
s/Dawn Fonseca
s/Paul Stein

cc: Ms. Sandra Kohn
Ms. Susan Alford
Mr. David Bachrach
Mr. Joseph Gartner
Mr. Stephen Goldenberg
Ms. Rhoda Goodwin
Ms. Rita Hamburg
Mr. Rodney Jackson
Ms. Joanne Neiman
Ms. Rina Wald Spence
Ms. Tonia Yee
Dr. Edward Zarsky

EXHIBIT F

LAW OFFICES
GOLDSTEIN & PRESSMAN
P.O. BOX 125
678 MASSACHUSETTS AVENUE
CAMBRIDGE, MASSACHUSETTS 02139

July 7, 1978

James W. Schlesinger, President
The New Perspectives School, Inc.
215 Clark Road
Brookline, MA 02146

Re: Termination of Wayne Klug, Carolyn Anderson, Paul Stein, William Tilden, and Dawn Fonseca

Dear Mr. Schlesinger:

This law firm has been retained by the above-named individuals to represent them with regard to the termination of their employment as teacher/counselors at the New Perspectives School, Inc.

Wayne Klug, Carolyn Anderson, Paul Stein, and William Tilden were orally informed on or about June 16, 1978, by Sandra Kohn, Director of the School, that their employment was terminated, effective immediately. These terminations were effected without the named individuals having received any prior warning or notice that they might be terminated, without their being informed of any specific incidents on which their termination was based, and without their having any opportunity to rebut or answer any charges or complaints against them that might constitute just cause for their termination.

Dawn Fonseca tendered her resignation to the Board of Directors of the School in a letter dated May 16, 1978. Before the Board acted on this tender of resignation, Ms. Fonseca

orally notified you, as President, on or about June 8, 1978, that she was withdrawing this tender of resignation. She subsequently received a letter from you, dated June 9, 1978, purporting to reject her withdrawal of her resignation and formally notifying her of her termination.

Since the date of their termination, my clients have received no written notice of the reasons for their termination nor any opportunity to answer the reasons, if such reasons exist. The Personnel Practice Code of the School requires, as does federal and state law, that there be "just cause for any involuntary termination.

My clients feel that no just cause existed for their termination, but that such termination was due to their reasonable exercise of their professional responsibilities and their exercise of their rights under the First Amendment to the United States Constitution and the Massachusetts Labor Relations Act. Their termination was thus violative of their rights under the United States Constitution and Chapter 150E of the Massachusetts General Laws.

My clients hence demand that they be immediately reinstated and given full back pay. You are further requested to provide to my clients and to me proper written notice specifying the allegations which you consider to constitute just cause for their termination. You are further requested to appoint and convene immediately an impartial Grievance Committee to conduct a hearing in this matter, at which hearing my clients can be represented by counsel, can hear and challenge the allegations against them, can present evidence on their own behalf, and can record the proceedings on a tape recorder.

My clients are not hereby waiving any rights they may have to seek immediate relief through other appropriate legal channels.

I hope to hear from you as soon as possible.

Sincerely,
Kurt M. Pressman

KP/km
cc: Sandra Kohn, Director
Stephen Goldenberg
Joseph Gartner
Joanne Neiman
David Bachrach
Rodney Jackson
Rina Wald Spence
Susan Alford
Rhoda Goodwin
Rita Hamberg
Tonia Yee
Bud Zarsky

EXHIBIT G

LAW OFFICES
GOLDSTEIN & PRESSMAN
P.O. BOX 125
678 MASSACHUSETTS AVENUE
CAMBRIDGE, MASSACHUSETTS 02139

July 20, 1978

James W. Schlesinger, President
The New Perspectives School, Inc.
215 Clark Rd.
Brookline, MA 02146

Re: Termination of Wayne Klug, Carolyn Anderson, Paul Stein, William Tilden, and Dawn Fonseca

Dear Mr. Schlesinger:

I have been informed by my clients that you have appointed a grievance committee from within the Board of Directors to

"review the circumstances" surrounding the discharge of the five teachers. The grievance committee you have appointed reportedly consists of Edward Zarsky, Joseph Gartner, and Rita Hamberg.

On behalf of my clients I would like to object strongly to the composition of this committee. My clients feel this is not a fair, impartial, and unbiased committee in that several of the individuals, particularly Mr. Zarsky, have expressed hostility and opposition to my clients in the past with regard to this and other matters, as well as prejudgment of the issues in this dispute. As a matter of fairness and of law, other impartial, and unbiased individuals must be appointed to replace these committee members.

In addition, a proceeding in which the grievance committee merely interviews separately various individuals and makes a recommendation to the entire board is not sufficient. As expressed in my letter to you of July 7, 1978, you are required to provide prior written notice to me and my clients as to the charges against them and an opportunity for a full and fair hearing in which they can hear and challenge the statements and charges of other individuals against them.

Please contact me within one week to let me know whether you will change the composition of the girevance committee and whether my clients will be afforded the type of proceeding to which they are entitled by law.

Sincerely,
Kurt M. Pressman

KP/km

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 77-2236C

SHEILA RENDELL-BAKER,

PLAINTIFF

v.

SANDRA KOHN, Individually and as Director of the New Perspectives School, Inc.; SUSAN ALFORD, JOHN BUSINGER, JACKIE W. COOPER, STEPHEN B. GOLDENBERG, RODNEY JACKSON, JOANNE NEIMAN, JAMES W. SCHLESINGER, RINA WALD SPENCE, TONIA YEE, EDWARD ZARSKY, Individually and as Members of the Board of Directors of New Perspectives School, Inc.; NEW PERSPECTIVES SCHOOL, INC.; FRANCIS X. BELLOTTI, as Chairman of the Commonwealth of Massachusetts Committee on Criminal Justice; ROBERT J. KANE, as Executive Director of the Committee on Criminal Justice; JAMES GREGG, as Acting Director of the Law Enforcement Assistanfe Administration; GRIFFIN BELL, as United States Attorney General,

DEFENDANTS

COMPLAINT

Introduction

1. This is a civil action brought by plaintiff, a teacher and vocational counselor who was discharged by a publicly funded and regulated school in retaliation for her exercise of her right to free speech. This action seeks redress for violations of her constitutional rights to due process and equal protection of the laws and the right to free speech. Injunctive and declaratory relief as well as compensation is demnded.

Jurisdiction

2. Jurisdiction is conferred upon this Court by 28 U.S.C. 1331, 1343, 1361, and the First and Fifth and Fourteenth Amendments to the United States Constitution. Jurisdiction is

also conferred upon this Court for the entry of declaratory relief under 28 U.S.C. 2202 and 2210. This action is also authorized by 42 U.S.C. 1983 to redress deprivations of constitutional rights under color of state law.

3. The amount in controversy exceeds $10,000.00 exclusive of costs and interest.

Parties

4. Plaintiff Sheila Rendell-Baker resides at 1578 Beacon Street, Brookline, Massachusetts. Until her discharge on or about January 3, 1977, she was employed at the New Perspectives School, Inc.

5. Defendant Sandra Kohn is the director of the New Perspectives School, Inc., and is a member of the School's board of directors. As such she is responsible for the day to day operations of the School. In this capacity, her principal place of business is 74 Green Street, Brookline, Massachusetts.

6. Defendants Susan Alford, John Businger, Jackie W. Cooper, Stephen Goldenberg, Rodney Jackson, Joanne Neiman, James W. Schlesinger, Rina Wald Spence, Tonia Yee, Edward Zarsky are members of the board of directors of the New Perspectives School, Inc. In this capacity they are responsible for the overall operation of the School. Their principal place of business in this connection is 74 Green Street, Brookline, Massachusetts.

7. Defendant New Perspectives School, Inc. is incorporated under the laws of the Commonwealth of Massachusetts, and provides public high school facilities for those students in the Commonwealth who cannot function in a traditional high school. It is funded and regulated by local, state and federal governments and has as its principal place of business, 74 Green Street, Brookline, Massachusetts. James W. Schlesinger is president of the board of directors of the School.

8. Defendant Francis X. Bellotti is sued in his capacity as chairman of the Commonwealth of Massachusetts Committee

on Criminal Justice and as such has responsibility for the operations of its programs, including the funding of the New Perspectives School, Inc. and plaintiff's position there.

9. Defendant Robert J. Kane is sued in his capacity as executive director of the above described Comittee on Criminal Justice and is responsible for the day to day operations of its programs including the funding of New Perspectives School and plaintiff's position there.

10. James Gregg is sued in his capacity as Acting Director of the Law Enforcement Assistance Administration (L.E.A.A.) a federal agency within the Department of Justice, an executive department of the United States. L.E.A.A. funds the Committee on Criminal Justice and the employment position of plaintiff's.

11. Griffin Bell is sued in his capacity as United States Attorney General who has the ultimate responsibility for the operations of the Department of Justice, a federal executive department. As such he has over all responsibility of the operation of the Law Enforcement Assistance Administration.

Statement of Facts

12. Plaintiff Sheila Rendell-Baker was employed as a teacher and vocational counselor at the New Perspective School, Inc. (hereinafter the School), on January 1, 1976. In this position she taught typing to students of the School and assisted students in obtaining suitable employment during the school year and upon graduation.

13. Plaintiff had been hired with the explicit understanding that she would continue in her position through the second year, with a pay raise. In the fall of 1976, defendant Kohn informed plaintiff that she would continue in her position through 1977.

14. The New Perspectives School, Inc. is a non-profit Massachusetts Corporation providing free education to young people who have problems completing high school level study in public schools. It is commonly described as an alternative high school. The School is primarily funded through public funds received from the Commonwealth of Massachusetts through the Committee on Criminal Justice and the Division of Drug Rehabilitation of the Massachusetts Department of Public Health, and Massachusetts Department of Education through Chapter 766 of the Acts of 1972. The School also received funding through the federal Law Enforcement Assistant Administration.

In the fiscal year from July 1, 1975 to June 30, 1976 the School's total budget of $118,944.39 came from:

(a) 15.9% from Town of Brookline Youth Resources.

(b) 34.4% from Division of Drug Rehabilitation of the Department of Mental Health.

(c) 12.6% from the office for children

(d) 5% from the Division of Youth Services

(e) 4% from D.F.C.S.

(f) 10% from cities and towns under the Ch. 766 state program.

Totaling more than 80% in public funds.

15. The School is regulated through statutes and regulations and funding criteria of each of the funding agencies.

16. The School functions as part of the Commonwealth's educational system and as part of a juvenile delinquency and drug abuse program sponsored by the Commonwealth and the United States.

17. Plaintiff's employment position at the School is directly funded by a grant from L.E.A.A. to the Committee on Criminal Justice, through the Town of Brookline to the School. Plaintiff was paid approximately $10,000.00 per year in her position.

18. Prior to January 3, 1977, plaintiff had received no

warnings nor adverse comments from her supervisor regarding her employment performance. Upon information and belief, plaintiff's performance in her work at the School was satisfactory.

19. On or about December 2, 1976 a group of students presented a petition signed by twenty-two (22) students to a meeting of the Board of Directors of the School. Said petition (a copy of which is attached hereto as Exhibit A, and incorporated herein by reference) called to the attention of the Board, that defendant Kohn (Director of the School) had stripped the Student-Staff Council of all role in the hiring and firing of School personnel. Said petition was critical of defendant Kohn.

20. At the meeting of the Board of Directors at which said petition was presented, plaintiff voiced support for the Student-Staff Council as a benefit to the School and urged that it be given a responsible role in the School's affairs. Plaintiff's position was opposed by defendant Kohn.

21. At the direction of defendant Kohn, the School's administrative assistant, Nancy Lincoln, notified the Committee on Criminal Justice by letter on or about December 13, 1976, that plaintiff was terminated from her position at the School.

22. Plaintiff received no notice of said termination prior to December 13, 1976.

23. On January 3, 1977, without prior notice, defendant Kohn tried to convince plaintiff to resign. When plaintiff refused to resign she was terminated by defendant Kohn.

24. At no time prior to said termination, nor subsequent to it did plaintiff receive any specifics as to the cause for termination, nor any opportunity to respond to any allegations of cause for her termination.

25. Plaintiff was terminated for her support of the Student-Staff Council, and Student-Staff responsibilities as outlined in said petition.

26. Said petition was an appropriate exercise of the

students' right to free speech and consistent with the stated goals of the School and the funding and regulatory agencies of the state and federal government.

27. Plaintiff's support for said actions of the students in their efforts to establish a Student-Staff Council was a proper exercise of her rights to free speech.

28. Plaintiff's acts, with regard to said petition were not disruptive of the educational function of the School, and occurred outside of the educational function.

29. Defendant Kohn knowingly and wilfully and with malice violated plaintiff's right to speech and assembly by the termination of plaintiff's employment.

30. Since Plaintiff's termination, the defendant Board members and defendant Kohn have placed in the records of the Department of Employment Security, allegations that plaintiff was drinking alcoholic beverages with minor students, and incited students to revolt.

31. It is believed that the defendants placed the same allegations in the records of the School, the Committee on Criminal Justice and other agencies.

32. These allegations, although false, have placed a stigma on plaintiff's employment record, which will prejudice her future employment prospects.

33. Plaintiff, in spite of substantial efforts, has been unable to obtain suitable employment since her termination.

34. Plaintiff, through counsel, has sought a hearing on this matter from defendants (see correspondence attached as Exhibits B, C, D, E, F). A hearing was promised by the School and its Board members but has never been held, nor has plaintiff been given notice of the alleged reasons for her discharge.

35. Plaintiff has exhausted all available administrative remedies.

36. The non-federal defendants have acted at all times, in connection with the issues of this complaint, under color of state law and/or as agents of the federal defendants.

First Claim

37. Plaintiff's record carries the stigma of defendants' false allegations and thereby prejudices her future employment in violation of her due process and equal protection guarantees of the Fifth and Fourteenth Amendments to the United States Constitution.

Second Claim

38. Defendants' actions in terminating plaintiff's employment have violated her rights to free speech contrary to the guarantees of the First, Fifth and Fourteenth Amendments to the Constitution of the United States, in that plaintiff was fired for the legitimate exercise of her rights to speech and assembly. Said violations were wilful and knowing and malicious.

Third Claim

39. Plaintiff has an entitlement to the position from which she was terminated creating a property and liberty interest in her position protected by due process and equal protection guarantees of the Fifth and Fourteenth Amendments to the United States Constitution.

40. Plaintiff's discharge from employment without prior notice and a proper hearing violated these rights.

WHEREFORE, plaintiff prays this Court enter a judgment as follows:

1) A temporary injunction directing the immediate reinstatement of plaintiff with back pay.

2) A preliminary injunction directing the reinstatement of plaintiff with full back pay pending a determination of this action.

3) A permanent injunction against the acts complained of in this complaint.

4) A judgment for full back pay plus interest, from the date of plaintiff's discharge.

5) An award of compensatory and punitive damages in the amount of $50,000.00 to be jointly and severably assessed against defendants.

6) An order directing defendants to remove all false allegations from all records and enjoining defendants from maked further similar allegations in any form to any person.

7) A declaratory judgment that the acts of defendants complained of are illegal.

8) A declaratory judgment that plaintiff cannot be terminated for the proper exercises of First Amendment rights.

9) A declaratory judgment that plaintiff may not be discharged without prior notice and a prior appropriate hearing consonant with the guarantees of due process and equal protection.

10) An award of reasonable attorney's fees and costs of bringing this action.

11) Such other and further relief as this Court deems just and proper.

By her attorney,
ROBERT J. DOYLE
DOYLE, PLAYTER & NOVICK
462 Talbot Avenue, P.O. Box A
Dorchester, MA 02124
825-7311

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 78-2402-MA

WAYNE KLUG, ET AL.,
PLAINTIFFS

v.

THE NEW PERSPECTIVES SCHOOL, INC., ET AL.,
DEFENDANTS

MOTION TO DISMISS OR TO STAY PROCEEDINGS

Pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, defendants hereby move to dismiss the Complaint for failure to stand a claim upon which relief can be granted or in the alternative to stay the proceedings in this matter until such time as the State administrative proceedings and State judicial proceedings have been concluded. In support of this motion, defendants state:

1. This case is primarily a labor dispute between five (5) employees of the defendant and the defendant, a private school in Brookline, Massachusetts. The plaintiffs here have brought a petition before the State Labor Relations Commission which is now pending. That matter is being treated by the State Labor Relations Commission as a case involving a private employer in its relations with five of its employees. As a matter of fact and law, the case involves no State action within the meaning of the Fourteenth Amendment and therefore this Court does not have subject matter jurisdiction over the plaintiffs' claim. Rule 12(b)(1).

2. Alternatively, the plaintiffs do not state a claim upon which relief can be granted. While ordinarily the plaintiffs need not exhaust State administrative remedies before suing in Federal Court (assuming they have standing to sue, see Paragraph 1 above), plaintiffs must exhaust at least some of their State administrative and judicial remedies when there

are State procedures that adequately protect federal rights. See *Dillard* v. *Industrial Commission of Virginia*, 416 U.S. 783, 793-98 (1974); *Gibson* v. *Berry Hill*, 411 U.S. 564, 574-75 (1973); See also *Wishart* v. *McDonald*, 500 F.2d at 1114, N.4 citing the *Dillard* and *Gibson* cases favorably.

3. Where as here the plaintiffs are seeking injunctive relief but they have failed to adequately allege irreparable harm and have further failed to move for injunctive relief, the plaintiffs must at least allow the administrative process to run before obtaining judicial review. *Myers* v. *Bethlehem Shipbuilding Corporation*, 303 U.S. 41, 50-1 (1938). Moreover, the plaintiffs have not alleged that the State administrative agency cannot fully satisfy their claims and have not alleged that the administrative process would be futile either because of precedent or some other bias. To the contrary, plaintiffs by pressing their claim before the State Labor Relations Commission (five (5) full days of hearing have been held and Memoranda of Law have been filed and the case is presently before the Commission for its determination of plaintiffs' claims for full back pay and reinstatement) have demonstrated their primary reliance for relief upon the State agency.

WHEREFORE, defendants move that the Complaint be dismissed or, alternatively that the matter be stayed pending exhaustion of State administrative and judicial remedies.

By their attorney,
RICHMOND, KASSLER, FEINBERG & FEUER, P.C.
s/MATTHEW H. FEINBERG
Matthew H. Feinberg
85 Devonshire Street
Boston, MA 02109
Tel. No. (617) 227-4800

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 77-2236-C

SHEILA RENDELL-BAKER,
PLAINTIFF

v.

SANDRA KOHN, et al.,
DEFENDANTS

MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS BELLOTTI AND HIGHGAS

The defendants Francis X. Bellotti and William Highgas (succeeding to the position of Robert J. Kane as Executive Director of the Committee on Criminal Justice) move pursuant to Fed. R. Civ. P. 56 for summary judgment. In support thereof the defendants state that there is no genuine issue of material fact and that these defendants are entitled to judgment as a matter of law.

Defendants Bellotti and Highgas note that the Court has already scheduled oral argument on this motion for February 4, 1980. The defendants anticipate that they will require approximately 15 minutes of oral argument and request leave to submit a memorandum of law at the hearing.

By their attorney
FRANCIS X. BELLOTTI
ATTORNEY GENERAL
s/BETTY E. WAXMAN
BETTY E. WAXMAN
One Ashburton Place
Boston, MA 02108
(617) 727-1004

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. No. 78-2402-MA

WAYNE KLUG ET AL.,
PLAINTIFFS

v.

THE NEW PERSPECTIVES SCHOOL, INC., ET AL.,
DEFENDANTS

AFFIDAVIT OF WAYNE KLUG IN OPPOSITOIN TO DEFENDANTS' MOTION TO DISMISS

I, Wayne Klug, a plaintiff in the above-entitled action, being duly sworn, do hereby depose and state:

1. I was employed as a teacher and counselor at the defendant New Perspectives School, Inc. (hereinafter referred to as "the School") from December, 1975 until June 16, 1978.

2. In the course of my employment I became familiar with the types of alternative educational programs which are provided by the Town of Brookline, the City of Boston, and other cities and town in the Boston area.

3. The Town of Brookline, from which a large number of the School's students come, has no educational programs which can meet the special needs of the students which it refers to the School, within its public school system. The School provides small, highly-structured classes at night to encourage students to obtain employment during the day, places a strong emphasis on individual counselling, and has a substantial vocational program for which students can receive school credit.

4. There are few, if any, comparable programs offered by any of the other cities and towns which rely on the School to provide the educational services it provides.

5. The Brookline School Committee authorizes the School to issue high school diplomas and certifies such diplomas.

6. The School is strictly regulated by the Brookline School Committee and/or the Massachusetts Department of Education or a subdivision thereof, which impose minimum curriculum requirements, total credit requirements, teacher certification requirements, and numerous other requirements regulating in large measure the School's educational program.

7. Under the contracts into which the School enters with its funding sources, numerous additional requirements are imposed upon the School, including but not limited to the right to inspect the School's financial records, compliance with the promulgated rules and regulations of the various governmental agencies, licensing requirements, obligation to accept court-referred and agency-referred students, reporting requirements, and general compliance with the statutes regulating public education, including M.G.L. c. 71B. Attached to this affidavit are contracts between the School and the Massachusetts Division of Drug Rehabilitation (A) and the Boston School Committee (B) for 1976-77, the provisions of which are essentially the same for the respective contracts for the year 1977-78. Attached also are Ch. 766 regulations from the state Department of Education. (C)

8. The said contract between the School and the Boston School Committee explicitly states on the first page thereof that the purpose of the contract is to enable the Boston School Committee to comply with its statutory obligation under M.G.L. c. 71B.

9. In 1976-77, the School's operating budget was approximately $204,118.00. Of this amount, approximately $172,508.00, or 85% came from funds received from the Commonwealth of Massachusetts or a subdivision thereof, including the Division of Drug Rehabilitation, the Boston 766 Program, the Brookline 766 Program, and the Brookline Youth Resources Bureau. Approximately $17,100 was received from the federal government, and $14,500 was received from private sources (only 7% of the budget). The same relative

proportions of its income applies also to the School's 1977-78 budget.

10. All of the statements in paragraphs 3 to 9 above are made to the best of my knowledge and belief.

11. The plaintiffs have not had an opportunity to conduct discovery in this action and expect that they would be fully able to document the above statements and other aspects of the School's relationship to the Commonwealth in the course of such discovery.

Signed and sworn under the pains and penalties of perjury this 6th day of February, 1980.

s/WAYNE KLUG
WAYNE KLUG

MIDDLESEX, SS. FEBRUARY 6, 1980

Then personally appeared the above-named Wayne Klug before me and acknowledged the foregoing to be his true act and deed.

s/ILLEGIBLE
Notary Public
My commission expires:
July 19, 1985

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
(Title omitted in printing)

DEFENDANT SANDRA KAHN'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

23. The following information is given rounded off:

(a) For Fiscal Year 1975-76 — Chapter 766 — $11,000.00; Town of Brookline — $18,000.00; Department of Mental Health — $40,000.00; Department of Youth Services — $6,000.00; Mass. Division of Family and Children's Services — $4,000.00; Office for Children — $14,000.00; LEAA — $8,000.00; Private Contributors and Foundations — $9,000.00

(b) For Fiscal Year 1976-77 — Chapter 766 — $66,000.00; Town of Brookline — $30,000. Department of Mental Health — $39,000.00; Department of Youth Services — $5,000.00; Division of Family and Children's Services — $2,000.00; Office for Children — $2,000.00; LEAA — $17,000.00; Individuals and Private Foundations — $2,000.00.

(c) For Fiscal Year 1977-78 — the only full funding we can state would be the Department of Mental Health — $40,000.00 and the Town of Brookline — $28,000.00.

24. State the names and addresses of each local, county, state or federal agency, subdivision, or department which regulates or regulated the School in any way in the years 1975, 1976, 1977, and 1978.

State Department of Education, Regional Review Board, Rindge Avenue, Cambridge, Mass.; Brookline School Committee, Brookline Town Hall, Brookline, Mass.; Mass. Department of Mental Health, 190 Portland Street, Boston, Mass.; Committee on Criminal Justice, 80 Boylston Street, Boston, Mass.

25. Identify all regulations and guidelines which apply to the School by title or number, and indicate whether said regulations and guidelines are published.

We receive guidelines published by the Department of Education and by the Department of Mental Health.

26. Give the names and addresses of the source of funds for the position which was held by the plaintiff at the School during her employment, including those agencies through which the funds passed to the School.

The LEAA funds were used for the position held by the plaintiff during her employment, and these funds were paid to the School through the Town of Brookline.

27. Give the names and home addresses of all persons who supplied you with information upon which you base your statement contained in paragraph 12 of your Answer to this Complaint.

See the answer to Interrogatory #6 above.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 77-2236-C

SHEILA RENDELL-BAKER,

v.

SANDRA KOHN, ET AL.

DEFENDANT
NEW PERSPECTIVES SCHOOL, INCORPORATEDS',
ANSWERS TO PLAINTIFF'S FIRST SET OF
INTERROGATORIES

1. State the name and home address of the person answering these interrogatories and the position held by said person at New Perspectives School, Inc. (hereinafter the "School").

James W. Schlessinger, President of New Perspectives School Incorporated, 215 Clark Road, Brookline, Massachusetts.

2. State your present duties relating to the School.

I am President of the Corporation.

3. What were your duties at the School in December of 1976?

I was President of the Corporation.

4. Give the names and home addresses of all servants, agents and employees and teachers and counselors of the School as of the date of the answering of these interrogatories, and the job title of each.

The following people are employed by the School:

Anderson - Reading
Arsenault - Drafting
Capuano - Social Studies
Cushner - Vocational Counsellor
Evans - Art and Physical Education
Fonseca - Social Studies, English
Ford - English and Sociology
Goode - Psychiatrist

Klug - English
Kohn - Director
Levine - Math
Lincoln - Administrative Assistant
McCleary - Counsellor
Meshon - Counsellor
Oakley - Photography
Phillips - Nurse
Richmond - Social Studies
Stein - Math and Science
Tilden - Counsellor

5. Give the names and home addresses of all servants, agents and employees and teachers and counselors of the school as of December 12, 1976, and the job title of each.

In December of 1976, the following were employed:

Anderson - Reading
Atherton - Math and Science
Behn - Social Studies
Belfer - Psychiatrist
Cushner - Photography
Evans - Art
Ford - English
Harmon - Psychology
Hogarth - Counsellor
Howe - Sewing
Klug - Video and Drama
Kohn - Director
Lincoln - Administrative Assistant
Lerner - Science
McCleary - Counsellor
Patterson - English and History
Phillips - Nurse
Rendell-Baker - Vocational Counsellor
Winnik - Health

6. Describe the process by which day-to-day decisions are made for the School. Please be specific as to (a) routine decisions, and (b) major policy decisions.

(a) Routine decisions are made by the Director, often after discussion with staff members; and

(b) Major policy decisions would be made by the Board of Directors.

7. Describe the process by which (a) counselors were discharged, and (b) teachers were discharged in 1976.

Counselors and Teachers are discharged by the Director.

8. Describe the process by which (a) counselors are hired, and (b) teachers are hired.

Counselors and Teachers go through a series of interviews and a final decision on hiring is made by the Director.

9. State the number of students enrolled in the School in December of 1976, and December of 1977.

The enrollment of the School is fifty students.

10. For all students are the School in December of 1977, indicate:

(a) from where each student was referred to the school,

(b) from where the funding for each student came and

(c) what regulations were applicable to each student, if any (include all Federal, state, county and municipal regulations).

10. Students are referred by the Massachusetts Division of Youth Services, by various Community Agencies and the majority by Public School systems. Funding comes for one student from the Division of Youth Services, for six students from the Department of Mental Health, and for forty-three students under the Chapter 766 Program. The Corporation is subject to regulations promulgated under Chapter 766, under the Department of Mental Health, Division of Drug Rehabilitation, and under the Massachusetts Department of Youth Services.

11. Give the names and addresses of all governmental

bodies, subdivisions and agencies which have licensed or certified the School. Include in your answer a description of all licenses and certificates.

We are licensed by the State Department of Education as a Chapter 766 certified school through the Regional Review Board on Rindge Avenue in Cambridge, Mass.; we are certified by the Brookline School Committee at the Town Hall in Brookline, Mass.; we have a license as a non-residential Drug Treatment Program by the Department of Mental Health, Division of Drug Rehabilitation, 190 Portland Street, Boston, Mass.; and we are certified for school purposes by the Building Commissioner of the town of Brookline, Brookline, Mass.

SUBSCRIBED under the pains and penalties of perjury.

s/JAMES W. SCHLESINGER
JAMES W. SCHLESSINGER, PRESIDENT
New Perspectives School, Inc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 77-2236-C

SHEILA RENDELL-BAKER,
PLAINTIFF
v.
SANDRA KOHN, et al.,
DEFENDANTS

AFFIDAVIT OF WILLIAM HIGHGAS, JR.

I, William Highgas, Jr., being duly sworn depose and state that:

1. I am the Executive Director of the Massachusetts Committee on Criminal Justice.

2. The Massachusetts Committee on Criminal Justice, pursuant to G.L. c. 6, §§156 *et seq.*, accepts grants from the Law Enforcement Assistance Administration and awards subgrants to applicants for Law Enforcement Assistance Administration funding throughout the Commonwealth. Thus, the Committee on Criminal Justice is essentially a funding mechanism.

3. The Committee on Criminal Justice requires applications for subgrants to include a program description which contains the job qualifications and responsibilities of staff to be hired as part of the program. If a subgrant application is accepted, this program description is incorporated into a standard contract, attached as A. That portion of a subgrant application of New Perspectives School, Inc. setting forth the specifications for its vocational counselor for 1976 and 1977 is attached as B.

4. In addition, the Committee on Criminal Justice attaches standard subgrant conditions to all subgrants that it awards. See attachment C. These conditions, in general, govern the fiscal and programatic monitoring of subgrantees. The Committee may also attach special subgrant conditions to par-

ticular subgrantees, and did so with respect to New Perspectives School, Inc. for years 1976 and 1977. (See attachment D).

5. Along with subgrant provisions, subgrantees are also subject to rules, regulations, and directives of the Committee on Criminal Justice and the Law Enforcement Assistance Administration. These rules, regulations and directives relate to the administration and funding of subgrantees and are set forth in my answers to interrogatories #4(a), (b) and (c).

6. The Massachusetts Committee on Criminal Justice may suspend or terminate funding if there is a substantial failure to comply with conditions set forth in a subgrant application approved by the Massachusetts Committee on Criminal Justice and incorporated into the subgrantee's contract; standard or special subgrant conditions; and the rules, regulations, and directives of the Committee on Criminal Justice of the Law Enforcement Assistance Administration. None of these provisions, however, relate in any way to hearing requirements for suspending or terminating individuals employed by subgrantees.

7. Moreover, the Massachusetts Committee on Criminal Justice is not empowered, from my knowledge and experience to conduct hearings concerning disciplinary action or job terminations of individuals employed by its subgrantees.

Signed under the pains and penalties of perjury.

s/WILLIAM HIGHGAS, JR.
WILLIAM HIGHGAS, JR.
Executive Director of the
Committee on Criminal Justice

Subscribed and sworn to before me, a Notary Public on this 25 day of January, 1980.

s/JOHN J. FORD
My Commission expires:
3-13-81

COMMONWEALTH OF MASSACHUSETTS
COMMITTEE ON CRIMINAL JUSTICE

GRANT AWARD

The Committee on Criminal Justice hereby awards to Town of Brookline obo New Perspective School (hereinafter called the "Grantee") Project No. 76C-247.1123 in the amount of $17,100.00 for New Perspective School as authorized by Section 303 of the Omnibus Crime Control and Safe Street Act of 1968. (P.L. 90-351 as amended by P.L. 91-644) and the Crime Control Act of 1973 (P.L. 93-83).

These grant funds may be used until the individual project period ending on the date for the programs or projects enumeratedin the Grant Application with amendments by this Grant Award, subject to any limitations or conditions set forth in Attachment A to this Grant Award.

The Grantee shall administer the programs for which this grant is awarded in accordance with the applicable rules, regulations and conditions of the Committee, as set forth in the various sections of the Grant Application and Attachment A.

The grant shall become effective when the Grantee signs and returns a copy of the Grant Award to the Committee.

Committee on Criminal Justice
By: Michael S. Dukakis
Governor
By: Francis X. Bellotti
Attorney General, Chairman
By: Charles V. Barry
Secretary of Public Safety

Committee Meeting
Date: 12/1/75

The Town of Brookline hereby signifies its acceptance of the above described grant on the terms and conditions above or incorporated by reference therein.

Town of Brookline
Agency, City or Town
By: s/Robert C. Cochrane, Jr.
Name: Robert C. Cochrane, Jr.
Title: Chairman, Board of Selectmen
Date: February 17, 1976

RECEIVED
MAR 9 1976
COMMITTEE ON
LAW ENFORCEMENT AND
ADMIN. OF CRIMINAL JUSTICE

THE COMMONWEALTH OF MASSACHUSETTS
COMMITTEE ON CRIMINAL JUSTICE

February 5, 1976

Robert Cochrane, Chairman
Board of Selectmen
Brookline Town Hall
333 Washington Street
Brookline, MA 02146

Dear Mr. Cochrane:

On behalf of the Committee on Criminal Justice, I am pleased to forward the formal Grant Award Documents, approved by the Committee, for:

Grantee: Town of Brookline obo New Perspective School
Project No.: 76C-247.1123
Short Title: New Perspective School
Award Amount: $17,100.00

Once these documents have been reviewed, completed, signed, and returned to the Committee, we will forward an initial check for you and your grant.

The documents consist of:

1. *The Grant Award,* (GPSC-11), including Attachment "A", Special Conditions Applicable to this grant. Added to these, and to be considered as an integral part, are "Conditions Applicable to the Fiscal Administration of Grants" under Part C, Title I, P.L. 90-351, P.L. 91-644 and P.L. 93-83.

Necessary Action: The front sheet must be signed by the Chief Executive Officer.

2. *Initial Financial Report and Fund Request* (GPSC-12 and 12h) and instructions.

Necessary Action: Must be completed and signed by the Project Financial Officer.

3. *Cash Matching Certificate* (GPSC-16)

Necessary Action: Must be signed by the Chief Executive Officer.

We have included two complete sets of documents. The original set (signed by the Governor and Attorney General) should be returned to:

The Committee on Criminal Justice
Room 725
80 Boylston Street
Boston, MA 02116

no later than February 19, 1976.

The second set is for your files.

If you have any questions or find that you will be unable to return the signed documents within the specified time, please contact Chava Abrams who is a member of my staff, and may be reached at 727-6306.

Sincerely,
s/ROBERT KANE
ROBERT J. KANE
Executive Director

RJK:nm
Enclosures

TOWN OF BROOKLINE
Massachusetts

February 17, 1976

IN BOARD OF SELECTMEN

The Board considered the question of authorizing Chairman Robert C. Cochrane, Jr. to sign the Grant Award Documents for Project No. 76C-247.1123 — New Perspectives School, in the amount of $17,100.

Administration of the program is through the Human Relations-Youth Resources Commission and the Board was advised by Director Joseph F. McCormack that program funds have been cut in half. He stated that the required $950 matching cash contribution has been provided by the school.

After further consideration, it was on motion unanimously

VOTED: To authorize Chairman Robert C. Cochrane, Jr. to sign the Grant Award Documents for Project No.

76C-247.1123 — New Perspectives School, in the amount of $17,100.

Attest:
s/RICHARD T. LEARY
Executive Secretary

Joseph F. McCormack

PROJECT No. 76C-247.1123

COMMONWEALTH OF MASSACHUSETTS
COMMITTEE ON CRIMINAL JUSTICE
CASH MATCHING CERTIFICATE

Award of 1976 funds for Committee on Criminal Justice projects is consistent upon receipt and expenditure of cash matching appropriations by grantee units of government during the period of the projects. Total cash match required is 10% of total project costs, half of which (5%) is provided by the state, and the other half must be appropriated by local grantees. The state buy-in can also be computed on the basis of 5.555% of the federal award amount. Using this method, the total match required is 11.110% of the federal award amount. State agencies receiving federal grants must provide the *full* amount of the match.

Therefore, awards of 1976 funds by the Committee will require the completion of the following certification:

The Town of Brookline obo New Perspectives School herewith certifies that an appropriation of at least $950.00 designated for the purpose of matching LEAA funds will be sought from the governmental body responsible for appropriating funds for the grantee at the earliest opportunity which will be on or before 7/1/76.

The Committee must be kept informed of the status of the appropriation request in the grantee's budgeting and appropriation process. If no funds are appropriated for matching purposes, the grantee agrees to return to the Committee $17,100.00.

Signed: ROBERT C. COCHRANE, JR.
Robert C. Cochrane, Jr.
Title: Chairman, Board of Selectmen

SUBGRANT APPLICATION

Project Description: PROJECT IMPLEMENTATION

Begin below and add as many continuation pages as necessary.

The Vocational Component will continue to be implemented in the following manner:

1. Continually updated vocational assessment of total present NPS population.

2. A Career Awareness-Job Placement course is taught two afternoons per week (four hours) for which students receive credit. This course is divided into two parts. The first part relates directly to the world of work. It involves exploring job opportunities and investigating career areas of interest in depth. Students learn and practice the techniques of job hunting and interviewing and find out how to write resumes and fill out job applications. They also acquire knowledge about applying to college, training programs and other educational institutions. Discussions focus on work-related responsibilities. The second part of the course consists of field trips to possible places of employment for those presently unemployed.

3. Continued development of the job bank which includes full and part-time job placement, apprenticeships, and jobs which allow for career advancement through on-the-job training, etc.

4. Travel and outreach to make contact with businesses and other educational institutions through conferences in order to gather data on career possibilities for high school graduates. This public relations/job development aspect of the component has the goal of helping our students have a better chance in a very competitive job market.

5. Use of video tape equipment in class to do job-related role playing in simulating employer-employee interviews and relationships, as well as in presenting relevant material on industrial training and management to students who will be exploring career areas.

6. Use of copier for duplicating updated job information for circulation, and for running off all materials for voca-

tional/career course, for evaluation forms for employers and student employees, and other information for the vocational component.

7. Use of the van for transporting students to and from job interviews; field trips to possible places of employment (for those who are unemployed), and to vocational and college workshops for high school graduates. Van will also be used for on-site visits to monitor job placements as well as to attend conferences with prospective employers.

8. A typing course is being taught by the vocational counselor with the student assistant in order to broaden job possibilities for our matriculating students.

Staff + Staff Organization:

The Vocational Counselor shall hold a bachelor's degree and have at least two year's experience in the field of vocational rehabilitation and guidance, knowledge of the Greater Boston Area community resources, experience working with adolescents. He/she shall:

a. be responsible to the Director;

b. spend at least 40% of his/her time in the community with employers, potential employers, making on-site visits, etc., and accompanying and supporting students when indicated;

c. teach a full credit course each trimester (four hours per week) on job placement and career counseling; teach a full credit typing course each trimester;

d. be present at all staff meetings;

e. be responsible for the coordination of all aspects of this component as well as its evaluation.

(Our present vocational counselor plans to continue in this position.)

Explanation of attached color-coded time schedule of vocational counselor:

Blue: Out of office; time spent in travel away from school will consist of:

1. on-site visits to student's places of work to evaluate employment adjustments and develop rapport with employer;
2. job crisis intervention: visit workplace when student having trouble on the job; resolve problems between student, employer, school;
3. job development: visit businesses; attend career fairs to develop rapport with employers; find out specific jobs available to high school students; learn about workplaces;
4. attendance at professional organization meetings, seminars and workshops related to work;
5. visit professional colleagues for collaboration of efforts and for advice.

Red: Counseling students with:

1. problems on the job;
2. problems getting jobs and choosing career direction;
3. deciding and applying for higher education;
4. obtaining interviews for students;
5. teaching job skill techniques: how to fill out forms, write letters of application, resumes, etc.

Green: Administrative duties include:

1. supervising student assistant and assigning him/her work;
2. preparing for class: develop lesson plans, create materials, obtain movies, outside speakers;
3. compiling and writing government reports;
4. contacting employers and organizations by phone and taking job orders over phone;
5. reading and researching about careers;
6. ordering supplies.

Yellow: Assigned duties:

1. staff meetings to discuss administrative issues and individual students, as well as staff training under supervision of consulting psychiatrist;

2. teach career awareness course:
   a. bring in speakers from various occupations;
   b. occasional field trips;
   c. learn the mechanics of job hunting, i.e. filling out forms, resume writing, etc.;
   d. reviewing opportunities in higher education;
   e. methods of examining careers: what to look for, how to decide suitability;
   f. use of video tape equipment in class.
3. teach typing class four hours per week.

ATTACHMENT A

STANDARD SUBGRANT CONDITIONS

Standard Subgrant Conditions — The applicant understands and agrees that a subgrant received as a result of this application shall be subject to and incorporates the following conditions of the Law Enforcement Assistance Administration and the Committee on Criminal Justice. The subgrantee shall include provisions appropriate to effectuate the purposes of these conditions, in all contracts of employment, consultant's agreements or contracts issued under an approved application.

1. Any grant awarded pursuant to this application shall be subject to and will be administered in conformity with the Conditions Applicable to the Fiscal Administration of Grants and General Conditions Applicable to Administration Grants under Part C, Title I, of P.L. 90-351 and P.L. 91-644.

2. Funds awarded pursuant to this application will be used only for the *project set forth in the Project Description* or in any amendment thereunto duly filed with and approved by the Committee.

3. Any grant funds expended for increased compensation of regular law enforcement personnel, exclusive of funds spent for training or research and development, will be matched by state or local expenditures of at least an equal amount.

4. The applicant agrees to account for its federal grant funds, make quarterly financial reports and meet reasonable

fiscal and Administrative requirements; in accordance with the LEAA Guideline Manual for Financial Management (M 7100.1A and changes), Federal Management Circular FMC 73-2, FMC 74-4 and FMC 74-7, and the LEAA Procurement Manual (M 1700.6 and changes).

5. The applicant agrees to make quarterly narrative progress reports and meet reasonable monitoring requirements.

6. Funds awarded pursuant to this application will be used to supplement and not to supplant state or local funds otherwise available for law enforcement and criminal justice programs and, to the extent practical, will be used to increase commitment of such funds.

7. The staff and/or consultive competencies and resources necessary to assure successful conduct of the project will be provided. Prior approval of the Committee is required for staff hiring and salary increases of any kind, and for engaging consultants in accordance with OMB Circular A-102 and Federal Procurement Manual, M 1700.6.

8. The applicant will comply with and will ensure compliance by its contractors with Title VI of the Civil Rights Act of 1964 and all requirements imposed by or pursuant to regulations of the Department of Justice (28 C.F.R. Part 42) issued pursuant to that title, to the and that no person shall, on the grounds of race, color, sex or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the applicant receives federal financial assistance from the grantor.

9. Pursuant to Section 521 of the Omnibus Crime Control and Safe Streets Act, as amended, all records, papers and other documents kept by recipients of LEAA funds shall be made promptly available upon request to any person for inspection and copying.

10. All equipment having a unit cost of over $25.00 purchased with grant funds will be marked with an identifying

number which will include the project number. An inventory list will be maintained and will be available for inspection and audit. All such equipment will be accounted for in the project final financial report and will revert to the Committee unless written permission is received to retain the equipment.

11. Unless the project is initiated and funds have begun to be meaningfully expended within ninety (90) days of the receipt of the grant award package, the Committee reserves the right to terminate the grant and any funds received must be returned forthwith to the Committee.

Authorizing Official _____ Date _____

COMMONWEALTH OF MASSACHUSETTS
COMMITTEE ON CRIMINAL JUSTICE
GRANT AWARD
ATTACHMENT A
SPECIAL CONDITIONS

PROJECT No. 76C -247.1123

Approval of the application by the Town of Brookline obo New Perspective School for programs or projects related to New Perspective School as authorized by Section 303 of the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351 as amended by P.L. 91-644) and the Crime Control Act of 1973 (P.L. 93-83), is contingent upon the grantee's compliance with the following Special Conditions:

1. Grantee agrees to provide a revised workplan for Committee approval within thirty (30) days of the receipt of the grant award. This workplan shall include:

a. A schedule of major tasks to be performed by the project in 1976;

b. More specific measures of accomplishment for the vocational component;

c. Detailed qualifications for the two staff positions approved for funding.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 77-2236-C

SHEILA RENDELL-BAKER,
PLAINTIFF
v.
SANDRA KOHN, et al.,
DEFENDANTS

SUPPLEMENTAL AFFIDAVIT OF WILLIAM HIGHGAS, JR.,

I, William Highgas, Jr., being duly sworn depose and state that:

1. I am the Executive Director of the Massachusetts Committee on Criminal Justice.

2. As I stated in a previous affidavit, the Massachusetts Committee on Criminal Justice, pursuant to G.L. c. 6, §§156, *et seq.*, accepts grants from the Law Enforcement Assistance Administration and awards subgrants to applicants for Law Enforcement Assistance Administration funding throughout the Commonwealth. Thus, the Committee on Criminal Justice is essentially a funding mechanism.

3. The Committee on Criminal Justice imposes standard subgrant conditions on its subgrantees. These conditions were attached to my first affidavit and marked as "C."

4. Paragraph 7 of the standard subgrant conditions provides, in relevant part, that the Committee on Criminal Justice must give prior approval to staff hired by subgrantees. In order to determine whether prior approval should be granted, the Committee on Criminal Justice reviews resumes submitted by subgrantees to ensure that the stated qualifications of an applicant are consistent with the qualifications for the position which have been proposed by the subgrantee and approved by the Committee. See attachment B to my first affidavit for the qualifications at issue here.

5. Neither I nor any other official or employee of the Committee on Criminal Justice interview applicants for staff positions with a subgrantee or exercise any other control over the hiring process.

Signed under the pains and penalties of perjury.

s/WILLIAM HIGHGAS, JR.
WILLIAM HIGHGAS, JR.
Executive Director of the
Committee on Criminal Justice

Subscribed and sworn to before me, a notary public on this 29 day of January, 1980.

s/JOHN J. FORD
My commission expires:
3/13/81

Principles for Determining Costs Applicable to Grants and Contracts With State and Local Governments

A. *Purpose and scope.*

1. *Objectives.* This Attachment sets forth principles for determining the allowable costs of programs administered by State and local governments under grants from and contracts with the Federal Government. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant. They are designed to provide that federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The application of these principles is based on the fundamental premises that:

a. State and local governments are responsible for the efficient and effective administration of grant and contract programs through the application of sound management practices.

b. The grantee or contractor assumes the responsibility for seeing that federally assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

c. Each grantee or contractor organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration.

3. *Application.* These principles will be applied by all Federal agencies in determining costs incurred by State and local governments under Federal grants and cost reimburse-

ment type contracts (including subgrants and subcontracts) except those with (a) publicly financed educational institutions subject to Bureau of the Budget Circular A-21, and (b) publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Federal agencies.

B. *Definitions.*

1. *Approval or authorization of the grantor Federal agency* means documentation evidencing consent prior to incurring specific cost.

2. *Cost allocation plan* means the documentation identifying, accumulating, and distributing allowable costs under grants and contracts together with the allocation methods used.